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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

METROPOLITAN EDISON CO.,
PENNSYLVANIA ELECTRIC CO.
JERSEY CENTRAL POWER & LIGHT CO.,
GENERAL PUBLIC UTILITIES CORP.,
BABCOCK & WILCOX CO.,
MCDERMOTT INC.,
DRESSER INDUSTRIES, INC.
RAYTHEON CONSTRUCTORS INC.,
BURNS & ROE ENTERPRISES, INC.,
Petitioners

v.

JONATHAN W. DODSON, et al.,
Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Should state rules of decision providing for punitive damages be incorporated into the federal "public liability action" created by Congress, in its 1988 amendments to the Price-Anderson Act, when Congress: (1) created a program of insurance and indemnity to assure compensation of persons injured by a nuclear incident; (2) channeled all legal liability to that insurance and indemnity fund; (3) capped all liability at the amount of that fund; and (4) expressly directed that rules of decision in the federal "public liability action" may not be derived from state law rules "inconsistent with" the federal program?

PARTIES TO THE PROCEEDING

Petitioners are Metropolitan Edison Co., Pennsylvania Electric Co., Jersey Central Power & Light Co., General Public Utilities Corp., Babcock & Wilcox Co., McDermott Inc., Dresser Industries, Inc., Raytheon Constructors Inc. and Burns & Roe Enterprises, Inc. The information required by Supreme Court Rule 29.6 regarding each of the Petitioners is set forth in Petitioners' Appendix at 69a.

Respondents are the plaintiffs in this litigation and are identified in the Appendix at 71a. Respondents assert claims for personal injury, business interruption and property damage.

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On Petition for Writ of Certiorari to the
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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully request that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered on October 17, 1995.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at 67 F.3d 1119 (3d Cir. 1995) and appears in the Appendix at 1a. The opinion of the United States District Court for the Middle District of Pennsylvania is unreported and appears in the Appendix hereto at 20a.

STATEMENT OF JURISDICTION

The judgment sought to be reviewed is a decision of the Court of Appeals for the Third Circuit rendered on October 17, 1995. App. at 1a. Petitioners' timely petition for rehearing and suggestion of rehearing *in banc* was denied on November 21, 1995. App. at 33a (Becker, J., in favor of rehearing).

This Court has jurisdiction to review the decision of the Court of Appeals by writ of certiorari pursuant to 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

The Price-Anderson Act, 42 U.S.C. section 2210(n)(2), provides in pertinent part:

> With respect to any public liability action . . . , the United States district court in the district where the nuclear incident takes place . . . shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy.

42 U.S.C. section 2014(hh) provides:

> The term "public liability action," as used in section 2210 of this title, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 2210 of this title, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

42 U.S.C. section 2014(w) provides, in pertinent part:

> The term "public liability" means any legal liability arising out of or resulting from a nuclear incident. . . .

The full text of the Price-Anderson Act, as amended, is set forth in the Appendix at 35a.

STATEMENT OF THE CASE

I. Proceedings

Petitioners are defendants in the consolidated cases of more than 2000 individuals and commercial enterprises claiming to have been injured by the 1979 nuclear incident at the Three Mile Island nuclear power plant ("TMI") in central Pennsylvania. Because plaintiffs seek damages allegedly caused by the radiological hazard of special nuclear material, these are "public liability actions" as defined in the Price-Anderson Act, 42 U.S.C. § 2014(hh). In September, 1988, the actions were timely removed or transferred to the Middle District of Pennsylvania pursuant to the 1988 amendments to the Price-Anderson Act, 42 U.S.C. § 2210(n)(2).

Every complaint demands an award of punitive damages, on the apparent theory that defendants need to be punished beyond the billion dollars already suffered in the loss of the plant and its cleanup. Petitioners moved for partial summary judgment dismissing the claim for punitive damages, on the grounds that the Price-Anderson Act (the "Act") transfers any legal liability, of any person who might be liable, to the "financial protection" fund created by that Act. Because the Act expressly precludes use of state-based rules of decision "inconsistent with" the financial protection scheme, because the Act prevents any deterrent "sting" from being inflicted on the defendants, and because the limited funds available in the financial protection system were intended to compensate persons injured, Petitioners argued that Pennsylvania's punitive damages rules were inconsistent with the Act and therefore could not serve as substantive rules of decision in these public liability actions. Petitioners also pointed out that since the financial protection system was inclusive of the costs of investigating and defending claims, the large transaction costs associated with even litigating punitive damage claims "inconsistently" diminished the financial protection funds. Petitioners concluded that in light of Congress' purpose in creating the financial protection system, the federal rules of decision to be fashioned should exclude punitive damage claims.

The district court denied this motion, App. at 26a, but certified its decision for interlocutory appeal, App. at 30a. The Court of Appeals for the Third Circuit accepted the interlocutory appeal, App. at 32a, but affirmed the district court, App. at 19a.

II. Description of the Price-Anderson Act

The Price-Anderson Act was originally enacted in 1957 to address the unique liability risks associated with private sector participation in the development of electric generation through nuclear energy, as contemplated by the Atomic Energy Act of 1954. *See Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 83 (1978) ("[I]t is clear that Congress' purpose was to remove the economic impediments in order to stimulate the private development of electric energy by nuclear power while simultaneously providing the public compensation in the event of a catastrophic nuclear incident."). The choice made by Congress was a system of "financial protection," defined in 42 U.S.C. § 2014(k) as "the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages." The financial protection system had two components — protection of industry from financial exposure, and protection of the public by creating a fund from which compensation for injuries could be assured. Industry was protected by mandated "omnibus" insurance and federal indemnity, arranged for by the licensee but required to cover the legal liability of any person who might be liable (42 U.S.C. §§ 2210(a), (c)), even complete strangers such as a crashing airplane or saboteur.[1] All legal liability was capped at the level of funds available through that system. 42 U.S.C. § 2210(e). The public was protected by the assured source of funds so provided.

When originally enacted, the "financial protection" fund was composed of $60 million in commercial insurance and $500 million in federal indemnity. As of March 28, 1979, the

1. *See* S. Rep. No. 296, 85th Cong., 1st Sess., *reprinted in* 1957 U.S.C.C.A.N. 1803, 1818 (crashing airplane), 1819 (saboteur).

date of the TMI accident, the "financial protection" fund was composed of primary insurance in the amount of $140 million, industry retrospective rating plan funds (42 U.S.C. § 2210(b)) in the amount of $335 million, and federal indemnity in the amount of $85 million, for a total and limit of liability of $560 million. The 1988 amendments to the Act (not retroactively applicable to the TMI accident, in this regard) greatly expanded the industry retrospective rating plan component, from $5 million per reactor to $63 million per reactor, adjusted for inflation every five years. 42 U.S.C. § 2210(b). The current per reactor exposure is more than $79 million. With this large pool of available funds, federal indemnity was eliminated as to commercial reactors, although it remains in place as to research reactors and Department of Energy contractors.

The original Price-Anderson Act did not provide a federal cause of action to persons claiming injury as a result of a nuclear accident, but instead assumed that state tort suits would be available. *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984). This was also changed in 1988. Congress created the "public liability action" as a federal cause of action (42 U.S.C. § 2014(hh)), and provided federal courts with jurisdiction over that cause of action, without regard to diversity of citizenship or amount in controversy (42 U.S.C. § 2210(n)(2)). Congress did not specify every substantive component of the rules of decision to be applied in such actions, but directed instead that rules of decision were to be "derived from the law of the State in which the nuclear incident involved occurs, *unless such law is inconsistent with* the provisions of" the Price-Anderson Act as a whole. 42 U.S.C. § 2014(hh) (emphasis added).

III. The Decision by the Court of Appeals

The court of appeals rejected defendants' argument that state punitive damages rules like Pennsylvania's, which are intended solely to punish and deter reckless conduct, are "inconsistent with" the provisions of the Price-Anderson Act which channel *all* financial responsibility to the insurance, ret-

rospective rating plan and indemnity funds, and limit liability to the funds so provided.[2] The court of appeals reasoned:

> Our analysis ... turns on a determination of whether punitive damages fall within the scope of "*any* legal liability" as that phrase is used in the Act. Obviously, as defendants concede, punitive damages are a type of legal liability.

67 F.3d at 1123, App. at 8a. From this, the court of appeals concluded that the "plain meaning of the language in the [1988] Amendments Act counsels that punitive damages are available in these actions." *Id.*

This conclusion, however, is a *non sequitur.* The fact that the Act defines "public liability" broadly, to include "any legal liability," does not mean that any legal liability imaginable must therefore be available under the Act; rather, it means that any legal liability imaginable must therefore be subject to the Act's provisions, including the insurance, indemnity, limit of liability, *and* rules of decision provisions of the Act.[3]

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2. Although the issue before the court below was the purely legal question certified for interlocutory appeal, the court of appeals incorporated, in footnote 2 (67 F.3d at 1121, App. at 4a), an observation from plaintiffs' brief to that court that defendants pled no contest to a criminal prosecution "arising out of the same nuclear incident that gives rise to this civil suit." This illustrates how readily accusations get substituted for fact. In fact, as the United States Attorney stated in recommending the referenced plea agreement:

> The indictment does not charge a legal nexus to the events of March 28, 1979 which have become commonly known as the Three Mile Island Unit No. 2 accident, and the pleas do not constitute an admission of such a nexus.

Transcript of Change of Plea and Sentencing at 17, in *United States v. Metropolitan Edison Co.,* Criminal No. 83-00188 (M.D. Pa. Feb. 28-29, 1984).

Petitioners would not want the unfortunate error made below, in crediting an erroneous accusation by plaintiffs' counsel, to taint or circumscribe analysis of the important legal question presented here.

3. Although nothing on the face of the Act exempts the federal indemnity layer from responding to punitive damage awards in these cases, the court of appeals approved the district court's creation of such an implied exception, based on longstanding policy considerations. 67 F.3d at 1122, 1128, App. 4a, 17a. Inexplicably, the court of appeals failed to examine

The court of appeals also relied on a section added by the 1988 amendments, 42 U.S.C. § 2210(s), which expressly prohibited punitive damage claims against a defendant covered by a federal indemnity agreement. 67 F.3d at 1124, App. at 9a. Although the TMI defendants in fact *are* covered by such an indemnity, the court reasoned that the effective date provision of the Act made this subsection applicable only to nuclear incidents occurring after August 20, 1988. Therefore, according to the court, the maxim *"inclusio unius est exclusio alterius"* made this subsection "as significant for what it omits as for what it says." 67 F.3d at 1124, App. 9-10a (citation omitted). The court of appeals, in short, *inferred* a congressional intent to permit punitive damages in cases not covered by the express bar of subsection (s). This inference of intent, however, is directly contradicted by the *declared* intent of the Senate Committee which authored subsection (s):

> This provision does not preclude the award of punitive damages against persons, including licensees of the [NRC], who are not indemnified by DOE under the Price-Anderson Act. *The Committee intends no preference, for or against the awarding of punitive damages in suits against such persons, be inferred from the inclusion of this provision in the bill.*

S. Rep. No. 70, 100th Cong., 1st Sess. 27 (1987), *reprinted in* 1988 U.S.C.C.A.N. 1424, 1440 (emphasis added).

Third, the court quoted from a portion of the legislative history of the Act for the proposition that this Court's decision in *Silkwood* remained applicable, even after the 1988 amendments, 67 F.3d at 1126, App. at 12-13a. The court referred to H.R. Rep. No. 104, 100th Cong., 1st Sess., pt. 1, at 19 (May 21, 1987), which it characterized as addressing a rejected proposal "to preclude punitive damages entirely." 67 F.3d at 1126, App. at 13a. This was simply wrong. As the quoted material makes plain, the proposal was not to "preclude punitive damages entirely," but to prevent payment of them from the financial protection mechanism. *That* proposal was rejected:

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whether similar considerations of policy — and selection of rules of decision consistent with such policy — apply to the primary and secondary layers of the financial protection system.

> The purpose of this amendment was to prevent the limited funds available for compensating actual injuries from being used to pay punitive awards. A serious question arose, however, whether the amendment subjected NRC licensees and DOE contractors to unlimited liability for punitive damages, thereby undermining one of the primary tenets of the Act. *Accordingly the Committee subsequently agreed to eliminate the amendment, thus restoring current law on the issue.*

67 F.3d at 1126, App. at 13a (emphasis by panel)(quoting H.R. Rep. No. 104 at 19). What this confirms is a decision not to alter the principle that the financial protection system captures "any" legal liability of "any" person who may be liable. It did not, contrary to the panel's reasoning, evidence an intent that punitive damages *should* be recoverable from the "limited funds available for compensating actual injuries." In fact, the same Report immediately thereafter stated that "the Committee *remains opposed to punitive damage awards in connection with claims arising under the Price-Anderson Act* because such awards could have the effect of diminishing the limited funds available to compensate actual injuries." 67 F.3d at 1126, App. at 13a (quoting H.R. Rep. No. 104 at 19) (emphasis added).

Thus what this legislative history shows is that *if* punitive damages are available, they are payable from the financial protection funds. But that history does not support the proposition that punitive damages are consistent with Congress' purposes in creating a public liability action; rather, the Committee expressly stated that it remained opposed to punitive damage awards.

Last, the court of appeals quoted from a report by the Senate Committee on Environment and Public Works, dealing with a proposed change to the bill, as follows:

> *Punitive damage awards . . . would be prohibited in suits against [NRC] licensees covered by the retrospective premium system, if, as a result of such an award, payments beyond the primary and secondary layers of financial protection would be necessary,* since the United States is obligated to provide a source of funding for such claims.

> *The bill does not otherwise affect current law regarding punitive damages.*

67 F.3d at 1126-27, App. at 14a (quoting S. Rep. No. 218, 100th Cong., 2d Sess. 12-13, *reprinted in* 1988 U.S.C.C.A.N. 1476, 1487-88)(emphasis by panel). The court concluded:

> It is hard to imagine more lucid declarations of congressional intent, and we will not judicially amend this statute or subvert the policy of the legislation by adopting defendants' arguments to the contrary.

67 F.3d at 1127, App. at 14a.

The court apparently misapprehended that the proposal addressed in the quoted Report in fact was *rejected.* Under the proposal referred to in that Report, Senate Bill 1865, 100th Cong., 1st Sess. (1987), punitive damages would be expressly prohibited only when "the United States would *thereby become obligated to make payments* under an agreement of indemnification covering such incident." *Id.* at § 103 (emphasis added). Under that approach, only the *last* dollars available in the financial protection system would be expressly exempted from punitive damages. Under the approach as enacted, even the *first* dollars would be expressly exempted from punitive damages claims, if there were a Government indemnity agreement applicable to the incident, without regard to whether the Government indemnity layer might ever be reached. Presumably this option was chosen because Congress recognized that dollars are fungible, and exposing the first dollars to punitive damages claims would only expose the Government indemnity layer that much sooner.

The larger point is that, contrary to the panel opinion, nothing in the legislative history of the Act evidences an intent to authorize punitive damages claims in public liability actions. That history evidences a firm decision not to expose the Federal Treasury to potential punitive damages claims; and it evidences either continuing opposition to, or an express declination to express a preference for or against, punitive damage claims in cases in which there is no federal indemnity agreement.[4]

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4. It must be remembered that there *is* a federal indemnity agreement applicable to these claims. Thus, if subsection (s) were applicable here, it

In other words, the Act as adopted contains no express direction concerning punitive damages claims for this case. That is precisely the circumstance in which analysis is necessary to determine whether a particular rule of state law is consistent or inconsistent with the Act as a whole.

Each of the bases of the court of appeals' decision is, thus, fallacious. In the section which follows, the reasons why this erroneous decision should be reviewed and corrected, now, will be presented.

NOTES *(Continued)*

would expressly bar the punitive damages claims here. Treating subsection (s) as an expression of public policy, that policy militates *against* the availability of punitive damages in these cases. This is true even if an implied exception is created here for the federal indemnity layer, as hypothesized by the court below (67 F.3d at 1128, App. at 17a), because, as noted in the text above, removing dollars from the primary or secondary layers in defending or paying punitive damage claims only results in a dollar-for-dollar reduction of the "cushion" before federal dollars must be tapped for compensatory damages awards.

REASONS FOR GRANTING THE WRIT

I. The Question Is Of Exceptional Importance

Because the decision below reflects the first appellate consideration of whether punitive damages are available in the federal "public liability action," there obviously is no conflict between circuits. Because these cases represent the first mass tort claims under the Price-Anderson Act, as amended in 1988, this Court has not previously had the opportunity to offer guidance under that Act.

Such guidance is desperately needed. The first group — ten "test case" plaintiffs — of this wave[5] of TMI claimants is scheduled for trial commencing in June, 1996. That trial will likely be a template for the more than 2000 other already pending TMI claimants, and any which may follow.

The health outcome commonly — and usually erroneously — associated with radiation exposure is cancer. Studies of exposed populations, such as the survivors of Hiroshima and Nagasaki, show that the latency period between exposure and manifestation of disease ranges from ten to thirty or more years. Thus, it is to be expected that there may be an entire generation of claimants asserting that their cancers were caused by exposures pre-dating the 1988 amendments, due to operations at nuclear power plants, Department of Energy facilities, or nuclear fuel facilities. Thus the question is of importance not just in cases spawned by the TMI accident, but also cases arising out of all such other operations.[6]

Just as the express bar to punitive damages contained in § 2210(s) does not apply retroactively to these pre-1988 cases,

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5. Early on, class claims for economic loss caused by the accident, class claims of local municipalities for emergency response costs, class claims of electric ratepayers for increased charges due to the cost of replacement power, and a few hundred individual personal injury plaintiffs (many claiming injuries resulting from emotional distress caused by the accident), were resolved by settlements. Publicity concerning those settlements prompted the current wave of TMI claims.

6. *See, e.g., In the Matter of West Chicago Thorium Tailings,* Nos. 95 C 2110 and 93 C 3623 (N.D. Ill.); *Kennedy v. Southern California Edison Co.,* No. 95-3769 (S.D. Cal. filed Nov. 17, 1995); *Hall v. Babcock & Wilcox Co.,* No. 94-0951 (W.D. Pa. filed June 6, 1994); *Cook v. Rockwell Int'l Corp.,* 151

neither does it apply retroactively to any of those other pending or prospective cases arising out of pre-1988 incidents. Nor will it apply to any cases arising out of post-1988 incidents at commercial reactors or nuclear fuel facilities. Punitive damage claims are routinely asserted in such cases. The question whether such claims are "inconsistent with" the Price-Anderson Act, pursuant to which all such cases must proceed, is and will continue to be important in a wide range of cases.

II. The Decision Below, in Permitting Punitive Damage Claims, Undermines Congress' Purpose, and Is Therefore Contrary to Decisions of This Court Requiring that Congress' Purpose Be at the Center of Analysis

Although these are the first cases presenting the question under the Price-Anderson Act, that Act is not the only federal statute requiring courts to selectively derive rules of decision from state law. This Court *has* instructed how that is to be done, instructions which the court below ignored.

Robertson v. Wegmann, 436 U.S. 584 (1978), involved a claim under the Civil Rights Act, 42 U.S.C. § 1983. Section 1988 of that act directs courts hearing actions under § 1983 to derive rules of decision respecting remedies from state law, unless such law is "inconsistent with the Constitution and laws of the United States." 42 U.S.C. § 1988. This Court explained:

> In resolving questions of inconsistency between state and federal law raised under § 1988, courts must look not only at particular federal statutes and constitutional provisions, but also at the policies expressed [in them]. . . . Of particular importance is whether application of state law would be inconsistent with the federal policy underlying the cause of action under consideration.

436 U.S. at 590 (quotation marks and citations omitted); *see also International Bhd. of Teamsters v. Foust,* 442 U.S. 42, 48-49 (1979) (because "fundamental purpose of unfair repre-

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NOTES *(Continued)*

F.R.D. 378 (D. Colo. 1993); *In re Hanford Nuclear Reservation Litig.,* 780 F. Supp. 1551 (E.D. Wash. 1991).

sentation suits" under Railway Labor Act was "to compensate for injuries caused by violations of employees' rights," punitive damages are not available in such actions); *Laird v. Nelms,* 406 U.S. 797, 801 (1971) (although conduct giving rise to strict liability may be "wrongful" under state law, congressional purpose in Federal Tort Claims Act was to waive sovereign immunity only in the case of "intentionally wrongful or careless conduct").

Just as in *Robertson v. Wegmann,* Congress has specified that rules of decision are to be derived from state law "not inconsistent" with the federal program. And just as in *Robertson,* the determination of whether a particular state rule of decision is consistent or inconsistent must turn on consideration of the purposes underlying the federal statute.

If the court of appeals had engaged in the required analysis — *i.e.,* if it had examined Congress' purposes in creating the public liability action to access financial protection funds — it would have arrived at a conclusion exactly opposite to the one it reached. This is because the only purposes of punitive damages under Pennsylvania law, to punish and deter,[7] are completely at odds with the purpose of a "public liability action," which is to assure prompt compensation to persons truly injured.

When Congress adopted the Act in 1957, it made the "Congressional finding" that:

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7. Pennsylvania, unlike some states, applies punitive damages solely to punish and deter extremes of conduct. *Kirkbride v. Lisbon Contractors, Inc.,* 521 Pa. 97, 103, 555 A.2d 800, 803 (1989). In Alabama, for example, the only permissible damages for the wrongful death of a minor child are "punitive" damages. *See Eich v. Gulf Shores,* 293 Ala. 95, 98, 300 So.2d 354, 356 (1974). In Connecticut, punitive damages are awardable solely to compensate a plaintiff for his or her legal fees and expenses, apart from taxable costs. *See Kelsey v. Connecticut State Employees Ass'n,* 179 Conn. 606, 615, 427 A.2d 420, 425 (1980). In Michigan, "exemplary damages" are intended to compensate plaintiff for the "humiliation, sense of outrage and indignity" resulting from injuries wilfully inflicted. *See Kewin v. Massachusetts Mut. Life Ins. Co.,* 409 Mich. 401, 419, 295 N.W.2d 50, 55 (1980). Thus, under Pennsylvania law, punitive damages are "a kind of windfall, at least in the sense that the punitive damages are paid in addition to damages necessary to make the victim whole." *Reimer v. Delisio,* 296 Pa. Super. 205, 211, 442 A.2d 731, 734 (1982), *aff'd per curiam,* 501 Pa. 662, 462 A.2d 1308 (1983).

> (i) . . . the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses.

42 U.S.C. § 2012. The terms "damages suffered" and "losses" connote compensatory, not punitive, damages. When Congress amended and extended the Act in 1975, it included a subsection requiring the NRC, in the event of an incident threatening the limit of liability, to estimate the "requirements for full *compensation* and relief of all claimants. . . ." Atomic Energy Act Amendments of 1975, Pub. L. No. 94-197, § 13, 89 Stat. 1111, 1114 (1975) (emphasis added). When Congress again amended and extended the Act in 1988, it added a subsection requiring the President, whenever a court determined that aggregate liability might exceed the limit under the Act, to submit to the Congress "an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident" and a plan to "provide for full and prompt *compensation* for all valid claims . . . ." 42 U.S.C. § 2210(i)(2)(A), (C) (emphasis added).

Congress' purpose to assure that funds would be available for *compensation* is amply confirmed by the legislative history of the Act. The draft legislation presented to the Joint Committee on Atomic Energy in 1957 was described as offering "a practical approach to the necessity of providing adequate protection against liability arising from atomic hazards as well as a sound basis for compensating the public for any possible injury or damage arising from such hazards." S. Rep. No. 296, 85th Cong., 1st Sess., *reprinted in* 1957 U.S.C.C.A.N. 1803, 1810.

When renewal and refinement of the Price-Anderson Act were considered in 1965, Congress again described one of its two major purposes as insuring availability of a fund which would provide "prompt and adequate financial compensation in the event of a major nuclear incident." S. Rep. No. 650, 89th Cong., 1st Sess., *reprinted in* 1965 U.S.C.C.A.N. 3209, 3213.

In 1975, Congress again extended and amended the Act, to assure that "[f]unds will be available to compensate the

public . . . for its losses." S. Rep. No. 454, 94th Cong., 1st Sess., *reprinted* in 1975 U.S.C.C.A.N. 2251, 2251.

The 1988 Amendments carried this same compensatory purpose forward:

> The Price-Anderson System, including the waiver of defenses provisions, the omnibus coverage, and the predetermined sources of funding, provides persons seeking compensation for injuries as a result of a nuclear incident with significant advantages over the procedures *and standards for recovery* that might otherwise be applicable under State tort law. The Act also provides a mechanism whereby the federal government can continue to encourage private sector participation in the beneficial uses of nuclear materials.

S. Rep. No. 218, 100th Cong., 2d Sess. 4, *reprinted in* 1988 U.S.C.C.A.N. 1476, 1479 (emphasis added).

The "channeling" feature of the Act, implemented through the omnibus insurance and indemnity, was deliberately chosen by Congress to simplify proceedings, while assuring compensation to persons injured. Thus, in considering the amendments adopted in 1988, a House Report observed:

> [T]he insurance and other financial protection requirements, indemnities, and limitations on liability cover any person found liable for damages from a nuclear incident. For instance, regardless of whether a commercial power plant accident was caused by actions of the licensee, the plant manufacturer, or any other party, liability would be "channelled" to the licensee and payment would be obtained from the compensation pool funded by utilities. This is another *significant departure* from normal tort law precepts, and is designed to ease the victim's legal burden by *obviating the need to identify the exact party at fault* in order to recover damages. The same channelling of liability, sometimes referred to as the "omnibus coverage" of the Act, applies in accidents involving DOE contractors. All liability is channelled to the contractor, who pays all successful claims (up to the limit on liability) and who is entitled to full indemnification by DOE.

H.R. Rep. No. 104, 100th Cong., 1st Sess., pt. 3 at 16 (1987) (emphasis added).

The report accompanying the early Senate version of the 1988 amendments also affirmed the compensatory purposes of the Act and the continued importance of the channeling features of the legislation:

> The Price-Anderson system is a comprehensive, compensation-oriented system of liability insurance for Department of Energy contractors and Nuclear Regulatory Commission licensees operating nuclear facilities. Under the Price-Anderson system, there is a ready source of funds available to compensate the public after an accident, and the channeling of liability to a single entity and waiver of defenses insures that *protracted litigation will be avoided.* That is, the Price-Anderson Act provides a type of "no fault" insurance, by which all liability after an accident is assumed to rest with the facility operator, even though other parties (such as subcontractors or suppliers) might be liable under conventional tort principles. This "omnibus" feature permits a *more unified and efficient approach* to processing and settlement of claims, thus allowing quick *compensation* to the public from the pool of funds set up by the Price-Anderson system.

S. Rep. No. 70, 100th Cong., 1st Sess. 14 (1987), *reprinted in* 1988 U.S.C.C.A.N. 1424, 1426-27 (emphasis added).

Congress also rejected the possibility of using the Act to deter conduct, as potentially "undermining" the entire compensatory scheme, making it "unworkable." For example, the advisability of a proposal by the Atomic Energy Commission to exclude contractors guilty of certain extremes of conduct from the indemnity program was analyzed as follows:

> If the indemnity was a matter of concern only to the Government and the contractor, an exclusion such as that for damages caused by 'gross negligence, willful misconduct or bad faith' of key employees would be understandable as an attempt to assure safe performance. However, the effect of such an exclusion may be to make the protection of the public depend on the contractor's conduct. In the circumstances, it seems advisable to leave out such

> provisions. Safe operation can be assured through regulation by the Commission and the operator can be penalized for improper conduct by means other than denial of protection against liability.

Report of the Atomic Industrial Forum, Inc. at 176 n.318, cited with approval by the Chairman of the Joint Committee in *Governmental Indemnity and Reactor Safety: Hearings Before the Joint Committee on Atomic Energy,* 85th Cong., 1st Sess. (1957) (citations and quotations omitted). This reasoning was adopted by the Report of the Joint Committee to Congress accompanying the original Price-Anderson bill, which reported that the AEC proposal had been rejected:

> since the damage to the public is the same, whether caused by any means — willful or nonwillful. However, the circumstances surrounding any nuclear incident, including the willfulness, would certainly be grounds for examining and possibly suspending the operations under the license.

S. Rep. No. 296, 85th Cong., 1st Sess., *reprinted in* 1957 U.S.C.C.A.N. 1803, 1819; *see also* S. Rep. No. 650, 89th Cong., 1st Sess., *reprinted in* 1965 U.S.C.C.A.N. 3209, 3214:

> The committee [Joint Committee on Atomic Energy] is also of the view that the possible exposure of reactor operators and others to liability beyond the sum of the financial protection required and the Government's indemnity would not add a significant incentive to the safe operation of nuclear facilities.

The Senate debate on the predecessor to the 1988 amendments, H.R. 1414, 100th Cong., 2nd Sess. (1988), reflected continuing concern that fault issues not be injected into public liability litigation. *See* Remarks of Senator Johnston, Chairman of the Committee on Energy and Natural Resources:

> The Price-Anderson system is a comprehensive, compensation oriented system of liability insurance for DOE contractors and NRC licensees operating nuclear facilities . . . .

* * *

> . . . [A] subrogation amendment . . . which would require the Attorney General to sue a contractor after an accident to recover the damages if the accident resulted from "gross negligence" or "willful misconduct," would totally *undermine* the Price-Anderson system. In theory, this amendment is intended to make contractors more "accountable" for their actions by threatening large financial exposure in the case of an accident. In fact, such an amendment would make the Price-Anderson compensation scheme *unworkable.*
>
> First of all, such an amendment will inevitably foster litigation that will interfere with the primary purpose of Price-Anderson. Subrogation will inject faultfinding into the Price-Anderson system, converting it from an efficient system for compensating victims in a mass tort situation to something like the system that has yet to compensate any of the victims of Bhopal, the asbestos cases, the agent orange cases, or the Dalkon shield cases.
>
> Let's not forget in the process of trying to make contractors "accountable" that the purpose of Price-Anderson is to compensate the public — quickly.

134 Cong. Rec. S2301-2302 (daily ed. March 16, 1988) (emphasis added).[8]

Finally, in its report on H.R. 1414, the predecessor to the Amendments Act, the House Committee on Interior and Insular Affairs (which drafted the version of the Amendments Act eventually enacted) explicitly considered the propriety of punitive damage awards in public liability litigation. The Committee noted that the then-current Act did not expressly state whether a court could award punitive damages in a claim arising out of a nuclear incident. H.R. Rep. No. 104, 100th Cong., 1st Sess. pt. 1 at 19 (1987). It also noted that the then-current Act did not state whether the financial protection or government indemnity funds could be used to fund such an award, if otherwise available. *Id.* The Committee observed that in *Silk-*

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8. The Senate Committee on Energy and Natural Resources, chaired by Senator Johnson, led the Senate to the Bill ultimately enacted as the 1988 Price-Anderson Amendments Act. The "subrogation amendment" was rejected. 134 Cong. Rec. S2335 (daily ed. March 16, 1988).

wood, this Court had ruled that the original Atomic Energy Act had not preempted punitive damages claims, but noted that *Silkwood* did not decide who (if anyone) would pay such an award in a case covered by the Price-Anderson Act. *Id.*

The committee then explained:

> During the 99th Congress, the Subcommittee on Energy and the Environment approved an amendment to H.R. 3653 that would have prohibited use of either private financial protection or government indemnity funds available under the Act to pay punitive damage awards. The purpose of this amendment was to prevent the limited funds available for compensating actual injuries from being used to pay punitive awards. A serious question arose, however, whether the amendment subjected NRC licensees and DOE contractors to *unlimited* liability for punitive damages, thereby undermining one of the primary tenets of the Act. Accordingly, the Committee subsequently agreed to eliminate the amendment, thus restoring current law on the issue. Notwithstanding this action, the Committee remains opposed to punitive damage awards in connection with claims arising under the Price-Anderson Act because such awards could have the effect of diminishing the limited funds available to compensate actual injuries.

Id. (emphasis in original).[9] The essential features of the Act therefore remained unchanged, in this respect, in the bill recommended by the Committee and adopted by Congress: it continued to cover "any legal liability" of "any person who may be liable," and channeled recovery to the predetermined funding sources and levels. But instead of continuing to rely on "state-law remedies, in whatever form they might take," *Silkwood,* 464 U.S. at 256, Congress created the federal "public liability action," in which *only* state rules of decision *con-*

9. This is the passage quoted by the court below as evidencing a congressional intent to permit punitive damage claims in public liability actions. *See* 67 F.3d at 1126; App. at 13a.

sistent with the federal *compensation* scheme would serve as the source from which federal rules of decision would be derived.

The decision below, which imposes on this system the transaction costs and delays of litigating punitive damage claims, is inconsistent with the care Congress took to provide omnibus coverage in which all legal liability is channeled to the financial protection funds, precisely to avoid the expense and delay of litigation over such issues.

III. Litigation of Punitive Damage Claims Undermines the Price-Anderson System

Congress did not want the limited funds available consumed in litigating questions — such as degrees of fault or even who might be at fault — irrelevant to the real goal of Price-Anderson, the identification and compensation of persons truly injured by the nuclear hazard. The decision below propels this litigation down that unwise and unwanted course. The parties will have to develop and present fact and expert testimony on a range of highly complex and technical issues having nothing to do with the real question, was anyone injured by the events at TMI. Evidence concerning design decisions, construction practices, operator training, reactor operator decisions in attempting to manage the accident, selection of radiation monitoring systems, and similar incredibly intricate areas will inevitably consume substantial time and dollars.

The evidence on such issues, having nothing to do with compensating persons injured, will multiply the opportunities for confusing a jury, and threaten to compromise a jury's ability to recall the evidence and resolve the questions relating to the equally difficult issues concerning medical causation. Those include highly technical issues involving the magnitude of accident releases, atmospheric dispersion of those releases, resulting doses to plaintiffs, and the bases in epidemiology and oncology for associating any such exposures with plaintiffs' cancers or other health problems. Given the often exaggerated fears commonly associated with supposed radiation effects, a

substantial effort will be required to educate a lay jury sufficiently to make a reasoned decision. Imposing on that process a need to educate a lay jury further in the nuclear physics and engineering involved in reactor design and operation will likely overwhelm the litigants, the court, and the jury. The possibility that any result, so formulated, might be irrational, is enormous.[10]

The court of appeals suggests that any difficulties respecting how the case is tried can be avoided through bifurcation (although the court declined to offer any directions in that regard), and that any difficulties regarding the competing demands of compensatory and punitive awards on a limited fund can be accommodated via the power of the district court to establish priorities for payments, under § 2210(o) of the Act. Neither of those palliatives solves the problems.

Bifurcation for trial does not eliminate the substantial waste of limited resources just in preparing and trying, whether in a unitary or bifurcated trial, the complex but irrelevant (to compensation) issues required by the punitive damage claims. Prioritization, after some judgments are rendered, reveals the real charade of the punitive damages claims: if the defendants prevail on the claims for compensatory damages, there will be no underlying right to recover to which the claim for punitive damages might attach, so punitive damages will never be recovered; if the plaintiffs prevail on the claims for compensatory damages, it will only be because they convince a jury that the TMI accident resulted in massive radioactive releases causing a serious public health problem. Given *that*

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10. To illustrate the likelihood of irrational results, imagine the evidence and jury instructions on the issue of the defendants' wealth, a typical consideration in punitive damage determinations. In public liability actions, the defendants' net worth is irrelevant, since payment comes from the financial protection fund. Does the jury hear evidence on the net worth of the insurers constituting the primary layer, the utilities constituting the secondary layer, and the Federal Treasury constituting the third layer? Or is the jury instead instructed as to the remaining limit of liability, and the possibility that some of those funds will have to be preserved for future claimants? *See* 42 U.S.C. § 2210(o)(1)(C). But because the jury would have no information about such possible future claims, it would be unable to make any rational judgment.

predicate, the court will be obliged to reserve sufficient funds for compensation purposes, so that punitive damages never will be recovered. In either case, trial of the claim for punitive damages, with its attendant expense and potential to misdirect the jury, will have been for naught, unless the goal *is* misdirection of the jury. Nothing in the text or history of the Act suggests that was Congress' goal. All the evidence is to the contrary.

The impossibility of predicting results from such a scenario, especially in light of the impossibility of predicting the amounts of punitive damage awards,[11] undermines the ability of the insurance industry to underwrite the risk, on which the Price-Anderson structure depends.

By the same token, the potential for huge and unpredictable punitive awards threatens the fiscal health of nuclear utilities throughout the country, whose only connection to the event is that they are also licensees of the Nuclear Regulatory Commission, and therefore are obligated to respond under the industry retrospective rating plan, 42 U.S.C. § 2210(b). Although in the case of the TMI accident, as noted above, the maximum amount of the retrospective premium assessment was $5 million per reactor, under the 1988 amendments this has increased to $79 million per reactor, at a rate of not more than $10 million per reactor per year. For a licensee such as Commonwealth Edison Company in Illinois, with 13 licensed reactors, this amounts to an exposure of more than a billion dollars; for the Tennessee Valley Authority, with its nine reactors, the exposure is $713 million; for Duke Power Co. in North Carolina, with its seven reactors, the exposure is $555 million. These are enormous sums, especially in an industry undergoing an historic shift to competitive markets. Thus, the decision to permit punitive damages in public liability actions exposes utilities around the country, who have no presence in

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11. *See, e.g., TXO Production Corp. v. Alliance Resources,* ___ U.S. ___, 113 S. Ct. 2711 (1993) (punitive award 526 times actual damages); *Pacific Mutual Life Ins. Co. v. Haslip,* 499 U.S. 1 (1991) (punitive award 250 times out-of-pocket expenses); *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257 (1989) (punitive award 117 times actual damages).

the locale where the nuclear incident occurred and where the jury will be drawn from, to potentially huge punitive damage liability. *See Honda Motor Co., Ltd. v. Oberg*, ____ U.S. _____, 114 S. Ct. 2331, 2340-41 (1994) (potential that "juries will use their verdicts to express biases against big businesses, particularly those without strong local presences").

In the *Haslip, TXO* and *Honda* decisions, *supra,* this Court has struggled with the difficult question of whether state judgments granting punitive damages violated the due process provisions of the U.S. Constitution. Generally, this Court has sustained such awards on the ground that punitive damages antedated the adoption of the Fourteenth Amendment. But in this case, the Court is not constrained by that history. The issue presented here is the application of § 2014(hh) of the Price-Anderson Act, in light of the express provisions and legislative history of that Act. Those provisions, and the history confirming their purposes, furnish a compelling basis for concluding that punitive damages claims have no place in public liability actions. It is not the Constitution, but Congress, which empowered, and indeed, *required* the courts to ensure that only rules of decision consistent with the compensation plan of the Act be incorporated into public liability actions under that Act.[12]

Far from honoring that requirement, the court below effectively wrote it out of the Act. As interpreted by the court of appeals, § 2014(hh) is surplusage: whenever the Act contains an express limitation or proscription, the Supremacy Clause assures that the express congressional directive supersedes any state rule of decision. More to the point, however, is the fact that the Act as a whole consists primarily of affirmative prescriptions, rather than negative proscriptions. Section 2014(hh) assures that no matter what rule of decision might obtain under state law, *only* those rules consistent with *all* the

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12. It must be said that if there ultimately were an award of punitive damages, there then would be substantive due process questions. *Cf. Nixon v. Oklahoma City,* 555 P.2d 1283, 1285 (Okl. 1976) ("If no social benefit is derived from the imposition of exemplary damages, all legal justification for the award collapses."); *see also Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 350 (1974).

provisions of Act may be used as the source from which federal rules will be derived for application in cases arising under the federal Act.

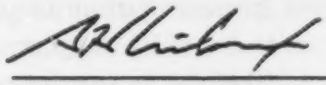
Because Congress consistently chose to have the financial protection system cover *any* person who may be liable with respect to a nuclear incident, regardless of the wilfulness of the actor's conduct, it is plain that claims for punitive damages must be evaluated in terms of the Act's insurance, indemnity, and limit of liability strictures. In light of those strictures, expressly imposed by "the provisions of § 2210," state law punitive damage rules like Pennsylvania's are "inconsistent with" the provisions of the Act. 42 U.S.C. § 2014(hh).

A writ of certiorari should issue so that the erroneous decision of the Court of Appeals for the Third Circuit may be reviewed and corrected, before that error is propagated through these and other "public liability actions."

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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APPENDIX

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Filed October 17, 1995

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 94-7600, 94-7601, 94-7602

IN RE: TMI

METROPOLITAN EDISON COMPANY ("MET ED");
PENNSYLVANIA ELECTRIC COMPANY;
JERSEY CENTRAL POWER & LIGHT COMPANY;
GENERAL PUBLIC UTILITIES CORP.;
BABCOCK & WILCOX CO.;
MCDERMOTT, INC.;
DRESSER INDUSTRIES, INC.;
UE & C - CATALYTIC, INC. (RAYTHEON);
BURNS & ROE ENTERPRISES,
Appellants Nos. 94-7600/7601

METRO EDISON COMPANY ("MET ED");
PENNSYLVANIA ELECTRIC COMPANY;
JERSEY CENTRAL POWER & LIGHT COMPANY;
GENERAL PUBLIC UTILITIES CORP.;
BABCOCK & WILCOX CO.;
MCDERMOTT, INC.;
DRESSER INDUSTRIES, INC.;
UE & C - CATALYTIC, INC. (RAYTHEON);
BURNS & ROE ENTERPRISES,
Appellants No. 94-7602

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civ. Nos. 88-cv-01452, 88-cv-01551, 88-cv-01558)

Argued: May 1, 1995

Before: SCIRICA, McKEE, and SAROKIN,
Circuit Judges.

(Filed October 17, 1995)

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OPINION OF THE COURT

MCKEE, *Circuit Judge.*

In this interlocutory appeal we are asked to determine whether persons who claim to have been injured by radiation from a nuclear reactor can recover punitive damages under state law. For the reasons that follow we conclude that plaintiffs here may recover punitive damages under Pennsylvania law and we will therefore affirm the decision of the district court.

I. PROCEDURAL HISTORY

These actions were begun in the aftermath of the March 28, 1979 nuclear accident at the Three Mile Island nuclear reactor in Dauphin County, Pennsylvania ("TMI"). Appellants — corporations which owned, operated, or supplied materials or services to TMI — are the defendants in personal injury actions brought by (or on behalf of) more than 2,000 individuals who resided in the vicinity of TMI at the time of the accident. Plaintiffs attempt to recover both punitive and compensatory damages for illnesses allegedly resulting from exposure to radiation released during the accident. Because these actions seek damages on account of the hazardous properties of special nuclear material, they are "public liability actions" arising under the Price-Anderson Act, as amended by the Amendments Act of 1988. *See* The Price-Anderson Amendments Act of 1988, Pub. L. No. 100-408, 102 Stat. 1066 (1988) (codified at 42 U.S.C. §2014(hh)) [hereinafter the "Act" or the "Amendments Act"].

The history of the several cases that have been litigated in this circuit as a result of the TMI accident is as long as it is complex, and we will only detail those proceedings that bear upon the issue currently before us.[1] Plaintiffs seek punitive

1. For a review of other related TMI proceedings and the issues that have been decided in previous rulings, see *In re TMI Litig. Cases Consol. II*, 940 F.2d 832, 835 (3d Cir. 1991) (*"TMI II"*).

damages against defendants General Public Utilities Corporation and Metropolitan Edison Company [hereinafter "defendants"] for defendants' alleged willful, wanton and reckless indifference to information concerning faulty plant equipment and design at TMI. Plaintiffs rest their claim for punitive damages upon assertions that defendants were aware of such information yet failed to take proper precautions to guard against the potentially dangerous effects of the equipment. Plaintiffs also assert that defendants falsified leak rate tests and reports submitted to the Nuclear Regulatory Commission and knowingly operated TMI in violation of technical specifications.[2]

Early in the course of the TMI litigation, the district court recognized the difficulty posed by the question of plaintiffs' right to recover punitive damages under the Price-Anderson Act. In order to prevent the litigation from being held up while that issue was addressed, the court bifurcated the damages claims and deferred consideration of the punitive damages claims until after resolution of the claims for compensatory damages. *In re TMI Litig. Personal Injury Claims,* No. 79-0906 (M.D. Pa. order entered Dec. 30, 1982); App. at 162.

While these and companion TMI cases were being litigated in state and district court, the Supreme Court decided *Silkwood v. Kerr-McGee Corp.,* 464 U.S. 238 (1984), which held in part that states are precluded from regulating the safety aspects of nuclear energy but that states still had authority under the Act to control nonregulatory aspects of nuclear facilities. *Id.* at 240-41, 256. Following the decision in *Silkwood,* the district court denied defendants' motion for summary judgment that had been filed following a Rule 16 conference. *See In re Three Mile Island Litig.,* 605 F. Supp. 778, 784 (M.D. Pa. 1985) (holding that punitive damages are coverable under the Price-Anderson Act, to the extent that damages assessed under the Act would not be paid from federal monies) [referred to herein as *"TMI I"*]. Shortly thereaf-

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2. Defendants pled no contest to possession, use and operation of a utilization facility in violation of NRC regulations in a criminal prosecution arising out of the same nuclear incident that gives rise to this civil suit. *See United States v. Metropolitan Edison Co.,* CR-83-00188 (M.D. Pa. order entered Feb. 29, 1984).

ter, defendants successfully petitioned this court for interlocutory review of that ruling. We ruled that the Price-Anderson Act provided no basis for federal jurisdiction, vacated the district court's order denying summary judgment, and remanded the matter back to the district court for remand to state court. *See Kiick v. Metropolitan Edison Co.*, 784 F.2d 490 (3d Cir. 1986).

Meanwhile, Congress enacted the Amendments Act of 1988 which became effective on August 20, 1988. The Amendments Act created a federal cause of action, the "public liability action," and mandated that federal courts shall have both original and removal jurisdiction over such actions. 42 U.S.C. §2210(n)(2). This provision retroactively conferred "arising under" jurisdiction by way of public liability actions over these cases. *See In re TMI Litigation Cases Consolidated II,* 940 F.2d 832 (3d Cir. 1991), *cert. denied sub nom., Gumby v. General Public Utils. Corp.*, 112 S. Ct. 1262 (1992) [*"TMI II"*]. The Amendments Act also placed a "limitation," (more accurately described as a prohibition) on punitive damages awards in public liability actions where the United States is obligated to make indemnification payments on behalf of a particular defendant. 42 U.S.C. §2210(s).

Defendants eventually moved for partial summary judgment on plaintiffs' claims for punitive damages. Defendants argued before the district court that Pennsylvania's allowance of punitive damages was inconsistent with the compensatory nature of the Amendments Act as well as that Act's prohibition against state regulation of the safety aspects of nuclear reactors. The district court denied partial summary judgment and held that punitive damages are available in these cases so long as the money to pay such awards does not come from the United States Treasury. *In re TMI Litig. Consol. Proceedings,* Nos. 1:cv-88-1452, 1:cv-88-1551, 1:cv-88-1558, slip op. at 9 (M.D. Pa. Feb. 18, 1994). Thereafter, the district court certified a number of issues for interlocutory appeal, including defendants' right to recover punitive damages. We here only address defendants' right to recover punitive damages. In companion opinions we address the remaining issues that were certified for appeal.

II. DISCUSSION

The question of law certified for appeal by the district court for this interlocutory appeal is:

> Whether Pennsylvania's rules of decision relating to punitive damages are inconsistent with the provisions of the federal Price-Anderson Act, as amended, and therefore may not serve as rules of decision to be applied in a "public liability action" under the Price-Anderson Act.

In re TMI Litig. Consol. Proceedings, Nos. 1:cv-88-1452, 1:cv-88-1551, 1:cv-88-1558, slip op. at 6 (M.D. Pa. July 13, 1994). In holding that punitive damages awards under Pennsylvania law do not violate the Price-Anderson Act or its Amendments, the district court stated:

> Defendants argue in great detail that the award of punitive damages in this case is inconsistent with the overall scheme adopted by Congress in the Price-Anderson Act. However, the Supreme Court addressed essentially this same argument in *Silkwood* and decided that punitive damages were consistent with applicable federal statutes and regulation. In addressing the government's conflict preemption argument, the Supreme Court explicitly found that 'exposure to punitive damages [does not] frustrate *any purpose* of the federal remedial scheme.' 464 U.S. at 257 (emphasis added). . . . the Court clearly considered the Price-Anderson Act to be part of the relevant federal remedial scheme. By implication, then, the *Silkwood* court concluded that punitive damages were not inconsistent with the Price-Anderson Act.

Id. at 5. The district court concluded that none of the 1988 amendments to the Price-Anderson Act had changed the Supreme Court's conclusion. The court reasoned that § 2210(s) of the Amendments Act, limiting punitive damages, has no retroactive application, and therefore "that limit does not govern this case." *Id.* at 7. In addition, the district court properly observed that this "court did not interpret the Act as excluding punitive damages altogether[ ]" in *TMI II*. *Id.* at 8. Finally, the court noted that the indemnity agreement provid-

ing for coverage for punitive damages, which is available to insureds under the Amendments Act, 10 C.F.R. § 140.91, Appendix A, ¶2(c), p. 489 (1993), is still unchanged. *Id.* at 8-9. Based upon this analysis the district court concluded that plaintiffs could recover punitive damages and denied defendants' motion for partial summary judgment. *Id.*

Because the issue certified for review is purely a question of law, our review is plenary. *Buzzard v. Roadrunner Trucking, Inc.*, 966 F.2d 777, 779 (3d Cir. 1992). Our consideration of this issue is informed by statutory language, legislative history and the relevant case law.

A. The Language of the Amendments Act

By now, "[i]t is axiomatic that statutory interpretation begins with the language of the statute itself." *Government of Virgin Islands v. Knight*, 989 F.2d 619, 633 (3d Cir. 1993) (citing *Pennsylvania Dep't. of Pub. Welfare v. Davenport*, 495 U.S. 552, 557-58 (1990)). "Courts presume that Congress expressed its legislative intent through the ordinary meaning of the words it chose to use, and if the statutory language is unambiguous, the plain meaning of the words ordinarily is regarded as conclusive." *Id.* Plaintiffs argue that the plain meaning of the language in the Amendments Act counsels that punitive damages are available in these actions. We agree.

It is not disputed that these suits are "public liability actions." *See TMI II*, 940 F.2d at 857; 42 U.S.C. § 2210(n). Such actions include suits asserting "*any legal liability* arising out of or resulting from a nuclear incident or precautionary evacuation. . . ." 42 U.S.C. § 2014(w) (emphasis added). Section 2014(w) does exclude certain types of claims from those that may be brought under that statute. *See* 42 U.S.C. § 2014(w)(i-iii). Significantly, claims for punitive damages are *not* listed as an exception. Accordingly, the district court's conclusion is further supported by the doctrine of *inclusio unius est exclusio alterius* "which informs a court to exclude from operation those items not included in a list of elements that are given effect expressly by the statutory language." *Williams v. Wohlgemuth*, 540 F.2d 163, 169 n.30 (3d Cir. 1976). Thus, 42

U.S.C. § 2014(w)(i-iii) " 'is as significant for what it omits as for what it says.' " *Id.* (citation omitted). Our analysis therefore turns on a determination of whether punitive damages fall within the scope of "*any* legal liability" as that phrase is used in the Act. Obviously, as defendants concede, punitive damages are a type of legal liability. (Transcript of Oral Argument at 4-5.) The Supreme Court has reaffirmed that punitive damages are normally included within the concept of tort liability:

> [O]ne of the hallmarks of traditional tort liability is the availability of a broad range of damages to compensate the plaintiff "fairly for injuries caused by the violation of his legal rights." . . . [P]unitive or exemplary damages are generally available in those instances where the defendant's misconduct was intentional or reckless.

United States v. Burke, 112 S. Ct. 1867, 1871-72 (1992). *See also TXO Production Corp. v. Alliance Resources Corp.*, 113 S. Ct. 2711, 2718 (1993) (finding legal liability for punitive damages by affirming a judgment of $19,000 in compensatory damages and $10 million in punitive damages).

The Amendments Act was not intended to alter the nature of the tort claims which constitute public liability actions. Indeed, the Act directs that "the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of . . ." the Price-Anderson Act. 42 U.S.C. § 2014(hh). Here, the applicable state law is that of Pennsylvania, as TMI is located in Pennsylvania. *See id.* Historically, Pennsylvania has recognized punitive damages as a form a liability. *See Thompson v. Swank*, 176 A.2d 211, 211 (Pa. 1934) ("Where the injurious act is willful, malicious, or wanton, the jury, according to the malignity shown, without bias or feeling, may award a reasonable sum in vindication of the rights of the injured party as exemplary or punitive damages."); *Cf. Martin v. Johns-Manville Corp.*, 494 A.2d 1088, 1096 (Pa. 1985) (plurality) ("As a general guide in this area Pennsylvania recognizes the principles set forth in Section 908(2) of the Restatement of Torts (Second): '(2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless

indifference to the rights of others. . . .' "); *Feld v. Merriam*, 485 A.2d 742, 747-48 (Pa. 1984)(same).

Defendants assert that the Price-Anderson Act has three relevant objectives: "(1) assure the availability of funds to compensate persons injured; (2) limit liability to the funds so provided, to encourage private industry to invest in the nuclear power alternative; (3) achieve resolution of nuclear accident claims as efficiently and expeditiously as possible." Brief of Appellants at 6. Defendants argue that Pennsylvania's punitive damages rules are premised upon retribution, deterrence and punishment, and that they therefore cannot apply to operators of nuclear reactors after the Price-Anderson Act and the 1988 Amendments. *See Kirkbride v. Lisbon Contractors, Inc.*, 555 A.2d 800, 803 (Pa. 1989) ("the purpose of punitive damages is to punish a tortfeasor for outrageous conduct and to deter him or others from similar conduct"). Accordingly, defendants argue that the inherently penal nature of punitive damages in Pennsylvania is inconsistent with the purposes and policies of the public liability action, and the Act therefore precludes plaintiffs from recovering punitive damages. We disagree.

As noted above, defendants' position is undermined by the very language of the statue it is based upon. The Amendments Act does specifically prohibit punitive damages, but that prohibition is far more narrow than defendants' construction suggests. Section 2210(s) states:

> **Limitation of punitive damages**
>
> No court may award punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.

42 U.S.C. § 2210(s). However, even this prohibition is limited and applies only "with respect to nuclear incidents occurring on or after Aug. 20, 1988." Because the TMI accident occurred in 1979, well before the effective date of the 1988 Amendments, the qualified prohibition does not apply here.

See 42 U.S.C. § 2210 note (1988) (Effective Date of 1988 Amendment). Again, the language "is as significant for what it omits as for what is says." *Williams, supra.*

Moreover, we concluded in *TMI II* that imposition of state remedies in a public library action would not frustrate the objectives of the Price-Anderson Act. *TMI II,* 940 F.2d at 859. It was there noted that "[t]he ban on punitive damages applies only to nuclear incidents occurring after August 20, 1988, which does not include this case. . . . It should also be noted that punitive damages remain available when the government is not obligated to make payments under an indemnification agreement. *See* 42 U.S.C. § 2210(s) (1988)." *Id.* at 874 n.6 (Scirica, J. concurring).

In *Silkwood,* the Court held that the Atomic Energy Act[3] had not preempted a state authorized award of punitive damages. 464 U.S. at 256. Although the Price-Anderson Act did not control the analysis in *Silkwood,* the Court concluded that "the discussion preceding its enactment and subsequent amendment indicates that Congress assumed that persons injured by nuclear accidents were free to utilize existing state tort law remedies." *Id.* at 251-52. The defendants in *Silkwood* had argued that an award of punitive damages "frustrates Congress' express desire 'to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes' " as expressed in the Atomic Energy Act, 42 U.S.C. § 2013(d), and that such an award "conflicts with Congress' express intent to preclude dual regulation of radiation hazards." *Id.* at 257-58. The Court disagreed. "[T]he award of punitive damages in this case does not hinder the accomplishment of the purpose stated in § 2013(d)". The Court further stated: "Congress did not believe that it was inconsistent to vest the NRC with authority over the safety aspects of nuclear development while at the same time allowing plaintiffs . . . to recover for injuries caused by nuclear hazards." *Id.* at 257-58.

Thus, although Congress clearly intended to preempt state regulation of nuclear safety standards when it enacted

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3. 42 U.S.C. §§ 2011-2284 (1976 ed. and Supp. V).

Price-Anderson, "the award of punitive damages would not impede the congressional goal of promoting nuclear safety." *TMI II,* 940 F.2d at 859. All that has changed since *TMI II* is the enactment of the 1988 Amendments, and it is clear from the unambiguous language of those Amendments that Congress did not intend to change the result the Supreme Court had reached in *Silkwood.*

In view of the sweeping changes effectuated in the Amendments Act, Congress could easily have completely precluded punitive damages in every case arising out of a nuclear incident or precautionary evacuation. However, Congress declined to extend its punitive damages limitation that far. The district court correctly reasoned:

> In passing the [Amendments] Act, Congress clearly had an opportunity to overturn the Supreme Court's pronouncement in *Silkwood.* In "transform[ing] . . . the entire Price-Anderson landscape . . . [w]ith the passage of the Amendments Act," *TMI II,* 940 F.2d at 857, Congress did not hesitate to overturn several prior decisions of the Third Circuit with which it disagreed. *See* 42 U.S.C. § 2014(hh) (providing for federal jurisdiction over suits arising out of *all* nuclear incidents and reversing *Stibbitz [sic] v. General Pub. Utils. Corp.,* 746 F.2d 993 (3d Cir. 1984), *cert. denied,* 469 U.S. 1214 (1985); and *Kiick v. Metropolitan Edison Co.,* 784 F.2d 490 (3d Cir. 1986). Yet, despite its substantial revision of the nuclear regulatory scheme, Congress only partially limited *Silkwood's* holding.
>
> . . . While a statement in the legislative history indicates that Congress did not intend any inference for or against the applicability of punitive damages in other cases be drawn from the provision, *see* S. Rep. No. 70, 100th Cong., 1st Sess. 27, (1987), the failure of Congress to completely reverse *Silkwood* at the very least indicates that Congress did not believe an award of punitive damages in prior cases to be so inconsistent with the purposes of the Act that it must be changed.

In re TMI Litig. Consol. Proceedings, Nos. 1:cv-88-1452, 1:cc-88-1551, 1:cv-88-1558, slip op. at 6-7 (M.D. Pa. Feb. 18, 1994).

B. Legislative History

Presented with the unambiguous language of the Act we need not, and ordinarily should not, look to its legislative history for clarification. Nevertheless, "[a] court may consider persuasive legislative history that Congress did not intend the words they selected to be accorded their common meaning. A construction inconsistent with a statute's plain meaning, however, is justifiable only when clear indications of a contrary legislative intent exist." *Knight,* 989 F.2d at 633 (citations omitted).

We disagree with defendants' position that references in the Act's legislative history suggest that punitive damages would "undermine" the "compensatory purposes" of the legislation and make it unworkable. Brief of Appellants at 20. The availability of punitive damages does not undermine Congress' compensatory scheme as set forth in the insurance/indemnification provision of the Amendments Act. In the discussion which preceded the Amendments Act, the House Committee eliminated a proposed amendment to preclude punitive damages entirely. In so doing, the House Committee confirmed that the holding of *Silkwood* is still controlling authority on that issue:

> The current Act [pre-1988 Amendments] does not expressly state whether a court may award punitive damages in connection with a claim arising out of a nuclear incident. Nor does the Act expressly state whether private financial protection funds or government indemnity funds could be used to pay punitive damages if imposed. In 1984, in *Silkwood v. Kerr-McGee Corporation,* 464 U.S. 238, the U.S. Supreme Court resolved the first of these two issues when it held that the Atomic Energy Act, as amended by the Price-Anderson Act, does not prevent a court from imposing punitive damages under state tort law. The Court did not address the second issue, however, whether private financial protection or government

> indemnity funds available under the Price-Anderson Act could be used to pay a punitive damages award.
>
> During the 99th Congress, the Subcommittee on Energy and the Environment approved an amendment to H.R. 3653 that would have prohibited use of either private financial protection or government indemnity funds available under the Act to pay punitive damage awards. The purpose of this amendment was to prevent the limited funds available for compensating actual injuries from being used to pay punitive awards. A serious question arose, however, whether the amendment subjected NRC licensees and DOE contractors to unlimited liability for punitive damages, thereby undermining one of the primary tenets of the Act. *Accordingly the Committee subsequently agreed to eliminate the amendment, thus restoring current law on the issue.*

H.R. Rep. No. 104, 100th Cong., 1st Sess., pt.1, at 19 (May 21, 1987) (emphasis added). The then current law on the issue of punitive damages was expressed in the holding of *Silkwood.* Thus, the legislative history reveals that the compromise in the legislative process led to a statute permitting punitive damages, despite the House Committee's reservations concerning such awards. *See id.* ("the Committee remains opposed to punitive damage awards in connection with claims arising under the Price-Anderson Act because such awards could have the effect of diminishing the limited funds available to compensate actual injuries"). Thus, Congress decidedly declined the opportunity to expressly eliminate punitive damages.

Subsequent consideration of the Amendments Act in the Senate also indicates Congress' intent to allow punitive damages:

> Section 13 prohibits courts from awarding punitive damages under State law in any action that involves a nuclear incident if the action is brought against a Department of Energy Contractor, subcontractor or supplier indemnified under the Price-Anderson Act. *The provision insures that the Federal taxpayers will not have to pay*

> *punitive damages, consistent with established Federal policy, most forecefully stated in the Federal Tort Claims Act (28 U.S.C. 2674), that punitive damages may not be awarded against the Federal Government.*
>
> This provision does not preclude the award of punitive damages against persons, including licensees of the Commission, who are not indemnified by DOE under the Price-Anderson Act. The Committee intends no preference, for or against the awarding of punitive damages in suits against such persons, be inferred from the inclusion of this provision in the bill.

S. Rep. No. 70, 100th Cong., 1st Sess. 27 (June 12, 1987), *reprinted in* 1988 U.S.C.C.A.N. 1424, 1440 (emphasis added).

Similarly, the Committee on Environment and Public Works, concluded:

> The bill clarifies that an award of punitive damages is prohibited if the award would result in any obligation of the United States to make any payments for public liability. This reflects the longstanding policy that the Federal government should not be liable for punitive damages.
>
> Thus, all punitive damages would be prohibited in actions involving DOE contractors indemnified under section 170 r. *Punitive damage awards also would be prohibited in suits against licensees covered by the retrospective premium system, if, as a result of such an award, payments beyond the primary and secondary layers of financial protection would be necessary,* since the United States is obligated to provide a source of funding for such claims.
>
> *The bill does not otherwise affect current law regarding punitive damages.*

S. Rep. No. 218, 100th Cong., 2d Sess. 12-13, *reprinted in* 1988 U.S.C.C.A.N. 1476, 1487-88 (emphasis added).

It is hard to imagine more lucid declarations of Congressional intent, and we will not judicially amend this statute or subvert the policy of the legislation by adopting defendants' arguments to the contrary.

C. Purpose of Punitive Damages

As noted above, defendants accurately characterize the purposes of punitive damages under Pennsylvania law. *See Martin v. Johns-Manville Corp.*, 494 A.2d 1088, 1096 (Pa. 1985) ("In Pennsylvania, the function of punitive damages is to deter and punish egregious behavior.") (citations omitted).[4] However, those penal objectives are not necessarily in conflict with the Amendments Act.

Defendants correctly point out that the 1988 Act created a system of mandatory insurance premiums in order to create a fund to compensate those who were injured in nuclear accidents. This scheme causes all operators of nuclear reactors to collectively shoulder the cost of damages paid to anyone who recovers in a public liability action. Defendants rely in part upon *Esmond v. Liscio,* 224 A.2d 793 (Pa. Super 1966), to argue that punitive damages can not be imposed on any particular defendant or group of defendants without violating this collective approach to compensation. They suggest that "Pennsylvania's law does not permit one personally guilty of conduct which warrants imposition of punitive damages to 'shift the burden of punitive damages to his insurer.' " Brief of Appellants at 15 (quoting *Esmond,* 224 A.2d at 800). We do not think that *Esmond* prohibits punitive damages in a public liability action. Under the scheme of compensation established by the Amendments, an award of punitive damages which required payment out of the second layer of liability would presumably be spread vicariously through the industry, and no one facility would be penalized more than another. *See* 42 U.S.C. § 2210(b). This is not totally inconsistent with *Esmond* wherein the court stated, "[i]n general, allowing one who is only vicariously liable for punitive damages to shift the burden of satisfying the judgment to his insurer does not conflict with the rule of policy that we announce today." 224 A.2d at 800.

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4. We note that Pennsylvania law is consistent with the Supreme Court's characterization of punitive damages. *See Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 350 (1974) (describing punitive damages as "private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence").

As a practical matter we are, of course, aware of the possibility that several large punitive damage awards here, as with any mass tort litigation involving a limited fund, might deplete the fund. In *Juzwin v. Amtorg Trading Corp.*, 705 F. Supp. 1053, 1055 (D. N.J.) *modified*, 718 F. Supp. 1233, 1235 (D. N.J. 1989), then District Judge Sarokin noted the particular dangers that plague punitive damage awards in mass tort litigation and expressed concerns which we share in deciding the availability of punitive damages in these cases:

> Defendants can be held liable over and over again for the same conduct, a result which would be barred by virtue of the right against double jeopardy in a criminal matter. Although an award in an individual case may be fair and reasonable, the cumulative effect of such awards may not be. . . .
>
> Payment to individual plaintiffs rather than to a fund or class raises special problems in mass tort litigation. There is a decided risk that the earlier claimants will deplete the available assets to pay later claimants. Such a risk may exist even as to compensatory damages, but it would seem inappropriate to impose repeated penalties on a company if the result is to deny compensatory damages to subsequent claimants.

See also Dunn v. HOVIC, 1 F.3d 1371, 1393 (3d Cir. 1993) (dissenting opinion arguing against punitive damages awards in mass tort cases in general and in asbestos cases in particular).

As we explained in *Dunn*, "[w]e do not disagree with the concerns that have been expressed about punitive damages awards. . . . We differ instead with those who would have the judiciary resolve the conflicting policy arguments." *Id.* at 1387. We have neither the authority nor the desire to usurp Congress' policymaking function regarding the benefits and burdens of punitive damages in mass tort cases; rather, we are constrained to interpret the law as written. In doing so, however, we call attention to the possible inequities built into a

statutory scheme such as is before us here, where plaintiffs must resort to a finite fund to get compensatory as well as punitive damages.

Because there is no conflict between the Amendments Act and the substantive laws of Pennsylvania which allow punitive damages, we will instruct the district court to proceed with the litigation of these matters in a manner consistent with this opinion. In so doing, we emphasize that the district court has authority to prioritize the various claims if punitive damages are awarded and that the Price-Anderson Act's tri-level insurance scheme is easily adaptable to such a prioritization of claims. It cannot be gainsaid that "[i]f there is a limited fund, priority should be given to compensating those who have been injured rather than conferring windfalls on those who have already been compensated." *Juzwin*, 705 F. Supp. at 1055. We see nothing in the Act that precludes a district court from using its discretion to limit or even preclude punitive damages in accordance with the financial constraints of the fund and the Act's prohibition against punitive damage awards being paid out of the federal layer of insurance. However, we do not express any view as to whether the district court should so exercise its discretion. We leave the resolution of this issue to the district court.

III. CONCLUSION

For the reasons set forth herein, we will affirm the ruling of the district court granting plaintiffs the right to attempt to recover punitive damages, and remand these matters for further proceedings consistent with this opinion.

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 94-7600, 94-7601, 94-7602

IN RE: TMI

METROPOLITAN EDISON COMPANY ("MET ED");
PENNSYLVANIA ELECTRIC COMPANY;
JERSEY CENTRAL POWER & LIGHT COMPANY;
GENERAL PUBLIC UTILITIES CORP.;
BABCOCK & WILCOX CO.;
MCDERMOTT, INC.;
DRESSER INDUSTRIES, INC.;
UE & C - CATALYTIC, INC. (RAYTHEON);
BURNS & ROE ENTERPRISES,
Appellants Nos. 94-7600/7601

METRO EDISON COMPANY ("MET ED");
PENNSYLVANIA ELECTRIC COMPANY;
JERSEY CENTRAL POWER & LIGHT COMPANY;
GENERAL PUBLIC UTILITIES CORP.;
BABCOCK & WILCOX CO.;
MCDERMOTT, INC.;
DRESSER INDUSTRIES, INC.;
UE & C - CATALYTIC, INC. (RAYTHEON);
BURNS & ROE ENTERPRISES,
Appellants No. 94-7602

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civ. Nos. 88-cv-01452, 88-cv-01551, 88-cv-01558)

Argued: May 1, 1995

Present: SCIRICA, MCKEE, and SAROKIN,
Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel on May 1, 1995.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered July 15, 1994, be, and the same is hereby affirmed insofar as the District Court granting plaintiffs the right to attempt to recover punitive damages and the cause is remanded to the District Court for further proceeding consistent with the opinion of this Court. Costs taxed against appellants. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ P. Douglas Sisk
Clerk

Dated: October 17, 1995

Costs taxed in favor of Appellees as follows:

Total for Brief $203.30

Total $203.30

Certified as a true copy and issued in lieu
of a formal mandate on November 29, 1995.

Teste:

/s/ P. Douglas Sisk

Clerk, U.S. Court of Appeals for the Third Circuit.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE TMI LITIGATION CONSOLIDATED PROCEEDINGS	:	CIVIL ACTION NO. 1:CV-88-1452
This Document Relates to: All Plaintiffs	:	
• •	•	• •
IN RE TMI LITIGATION CONSOLIDATED TOURISM CASES	:	CIVIL ACTION NO. 1:CV-88-1551
This Document Relates to: All Plaintiffs	:	
• •	•	• •
HYLAND ROGERS, Administratrix of the Estate of James W. Rogers, Plaintiff	:	CIVIL ACTION NO. 1:CV-88-1558
v.	:	
METROPOLITAN EDISON COMPANY, *et al.*, Defendants	:	

MEMORANDUM

Before the court is Defendants' motion for summary judgment with respect to Plaintiffs' claims for punitive damages. Briefs have been filed and the motion is ripe for disposition.

Background[1]

This is not the first time this court has addressed the issue of punitive damages in this case. Early in the history of this litigation, this court concluded that punitive damages were

1. The procedural history of this case was set forth at length in this court's order of June 15, 1993 and, with the exception of certain issues specific to the instant motion, will not be repeated here.

permissible to the extent that funds to pay such damages did not come out of the United States Treasury. *In re Three Mile Island Litigation ("TMI I")*, 605 F. Supp. 778, 784 (M.D. Pa. 1985), *rev'd on other grounds sub nom., Kiick v. Metropolitan Edison Co.*, 784 F.2d 490 (3d Cir. 1986).

In *TMI 1*, this court relied heavily on the then-recent decision of the United States Supreme Court in *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984). In *Silkwood*, the Supreme Court permitted recovery of punitive damages in a suit brought by an employee of a plutonium processing plant against her employer for radiation-related injuries. The baseline for the Court's analysis was its observation that "Congress assumed that traditional principles of state tort law would apply with full force unless they were expressly supplanted. Thus, it is [Defendant's] burden to show that Congress intended to preclude such awards." *Id.* at 255.

The Supreme Court recognized the "tension between the conclusion that safety regulation is the exclusive concern of the federal law and the conclusion that a State may nevertheless award damages based on its own law of liability." *Id.* at 255. Regardless of this tension, however, the Court concluded that, "in enacting the Price Anderson Act, Congress assumed that state-law remedies, in whatever form they might take, were available to those injured by nuclear incidents." *Id.*

More important here, the *Silkwood* court also explicitly rejected an argument by the United States that a punitive damages award would conflict with the federal remedial scheme. *Id.* at 257. Conflict preemption is found where:

> 'compliance with both federal and state regulations is a physical impossibility,' *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963), or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Felder v. Casey*, 487 U.S. 131, 138 (1988); *Perez v. Campbell*, 402 U.S. 637, 649 (1971).

Gade v. National Solid Wastes Management Ass'n, ____ U.S. ____, 112 S.Ct. 2374, 2383 (1992) (parallel citations omitted).

Thus, in rejecting the government's conflict preemption argument, the Supreme Court found that "[p]aying both federal fines and state-imposed punitive damages for the same incident would not appear to be physically impossible. Nor does exposure to punitive damages create an obstacle to the accomplishment of Congressional purposes and objectives in enacting the federal nuclear regulatory scheme." *Silkwood*, 464 U.S. at 257.

In the instant motion, Defendants argue that the Price-Anderson Amendments Act of 1988 ("Amendments Act"), 42 U.S.C § 2011 *et seq.*, as interpreted by the Third Circuit in *In re TMI Consolidated Cases II ("TMI II")*, 940 F.2d 832 (3d Cir. 1991), *cert. denied sub nom., Gumby v. General Public Utilities Corp.*, 112 S.Ct. 1262 (1992), requires the court to reconsider its conclusion in *TMI I*, to reject the Supreme Court's analysis in *Silkwood* and to grant summary judgment in their favor with respect to Plaintiffs' punitive damage claims. Plaintiffs, on the other hand, assert that this court should follow its previous decision and deny the motion.

Discussion

Initially, Defendants argue that *Silkwood* did not dispose of issues relevant to this case because *Silkwood* was not a Price-Anderson Act case. Defendants are correct that, technically, *Silkwood* was not within the ambit of the Price-Anderson Act.[2] However, in *Silkwood*, the Supreme Court discussed the Price-Anderson Act at length. During the course of its analysis, the Court clearly considered the provisions of the Act to be part of the relevant "federal remedial scheme" regarding nuclear regulation. For that reason, this court was persuaded in 1985 and still believes that *Silkwood* is a good barometer of the Court's likely view of the availability of punitive damages in a Price-Anderson Act case. *TMI I*, 605 F. Supp. at 782.

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2. At the time of Silkwood's injury, the NRC did not require her employer, a plutonium processor, to participate in the Price-Anderson Act insurance pooling scheme. *See Silkwood*, 464 U.S. at 251-52 and n.12.

More fundamentally, Defendants argue that the Amendments Act requires this court to discard altogether the preemption analysis employed in *Silkwood* and other pre-Amendments Act cases addressing nuclear power and safety issues. Instead, Defendants argue that this court must "determine whether a specific state rule is or is not 'consistent with' the provisions of the Price-Anderson Act." (Defs.' Punitive Damages Supp. Br. at 8.)

Regardless of whether this court applies *Silkwood*'s conflict preemption analysis or the "inconsistency" analysis advocated by Defendants, this court believes that *Silkwood* counsels a finding that punitive damages are available in this case. If *Silkwood*'s analysis is still valid, this court has no reason to reconsider its 1985 ruling. Assuming, *arguendo,* that *Silkwood*'s approach is no longer proper, this court believes that *Silkwood* still effectively disposes of the arguments raised by Defendants.

Defendants argue in great detail that the award of punitive damages in this case is inconsistent with the overall scheme adopted by Congress in the Price Anderson Act. However, the Supreme Court addressed essentially this same argument in *Silkwood* and decided that punitive damages were consistent with applicable federal statutes and regulation. In addressing the government's conflict preemption argument,[3] the Supreme Court explicitly found that "exposure to punitive damages [does not] frustrate *any purpose* of the federal remedial scheme." 464 U.S. at 257 (emphasis added). As discussed above, the Court clearly considered the Price-Anderson Act to be part of the relevant federal remedial scheme. By implication, then, the *Silkwood* court concluded that punitive damages were not inconsistent with the Price-Anderson Act.[4]

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3. *See* Section III.B. of the *Silkwood* opinion. 464 U.S. at 257-258.

4. The *Silkwood* court also rejected the defendants' arguments that the award of punitive damages was preempted because it "frustrates Congress' express desire 'to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes' " as expressed in the Atomic Energy Act, 42 U.S.C. § 2013(d), and that a punitive damages award "conflicts with Congress' express intent to preclude dual regulation of radia-

This was the backdrop against which the Amendments Act was passed. In passing the Act, Congress clearly had an opportunity to overturn the Supreme Court's pronouncement in *Silkwood*. In "transform[ing] . . . the entire Price-Anderson landscape . . . [w]ith the passage of the Amendments Act," *TMI II*, 940 F.2d at 857, Congress did not hesitate to overturn several prior decisions of the Third Circuit with which it disagreed. *See* 42 U.S.C. § 2014(hh) (providing for federal jurisdiction over suits arising out of *all* nuclear incidents and reversing *Stibbitz v. General Pub. Utils. Corp.*, 746 F.2d 993 (3d Cir. 1984), *cert. denied*, 469 U.S. 1214 (1985); and *Kiick v. Metropolitan Edison Co.*, 784 F.2d 490 (3d Cir. 1986)). Yet, despite its substantial revision of the nuclear regulatory scheme, Congress only partially limited *Silkwood*'s holding.

One provision of the Amendments Act, 42 U.S.C. § 2210(s), expressly prohibits an award of punitive damages "against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification." However, while Congress made various provisions of the Amendments Act retroactive, the punitive damages provision was not one of them. *See* Pub. L. No. 100-408 § 20 (statutory note to 42 U.S.C. § 2014). Thus, that limit does not govern this case. While a statement in the legislative history indicates that Congress did not intend any inference for or against the applicability of punitive damages in other cases be drawn from the provision, *see* S. Rep. No. 70, 100th Cong., 1st Sess. 27 (1987), the failure of Congress to completely reverse *Silkwood* at the very least indicates that Congress did not believe an award of punitive damages in prior cases to be so inconsistent with the purposes of the Act that it must be changed.

Nor does language in *TMI II* indicate that the Third Circuit perceived punitive damages to be inconsistent with the

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tion hazards." *Id.* Instead, the Court found that "the award of punitive damages in this case does not hinder the accomplishment of the purpose stated in § 2013(d)" and that "Congress did not believe that it was inconsistent to vest the NRC with authority over the safety aspects of nuclear development while at the same time allowing plaintiffs . . . to recover for injuries caused by nuclear hazards." 464 U.S. at 257-58.

Act.[5] First, the *TMI II* court discussed *Silkwood*'s holding regarding punitive damages without giving any indication that it no longer considered its analysis sound.

> The court found no *conflict* in *Silkwood*, because the award of punitive damages would not impede the congressional goal of promoting nuclear safety. Permitting the states to apply their own nuclear regulatory standards, in the form of the duty owed by nuclear defendants in tort, would, however, "frustrate the objective of the federal law.

TMI II, 940 F.2d at 859.

Second, when discussing punitive damages, the *TMI II* majority noted that the Amendments Act "placed *limits* on the availability of punitive damages." 940 F.2d at 854. The court did not interpret the Act as excluding punitive damages altogether. Further, in his concurrence, Judge Sirica went further in noting that "punitive damages remain available when the government is not obligated to make payments under an indemnity agreement." *Id.* at 874 n.6.

Finally, the indemnity agreement cited by the Supreme Court in *Silkwood* as evidence that the NRC contemplated the award of punitive damages in Price-Anderson Act cases, *see* 464 U.S. at 255 and n.17, apparently has not changed in the more than five years since the passage of the Amendments Act.

Based on the foregoing, the court concludes that the holding of its prior case remains valid. Accordingly, punitive damages are available in this case to the extent that the funds to pay such damages do not come out of the United States Treasury. An appropriate order will be issued.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO, Chief Judge
Middle District of Pennsylvania

Dated: February 18, 1994.

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5. While the Third Circuit was not required to address squarely the issue of punitive damages in *TMI II,* that court's comments have a measure of persuasive and predictive value for this court.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE TMI LITIGATION CONSOLIDATED PROCEEDINGS	:	CIVIL ACTION NO. 1:CV-88-1452
This Document Relates to: All Plaintiffs	:	
* *	*	* *
IN RE TMI LITIGATION CONSOLIDATED TOURISM CASES	:	CIVIL ACTION NO. 1:CV-88-1551
This Document Relates to: All Plaintiffs	:	
* *	*	* *
HYLAND ROGERS, Administratrix of the Estate of James W. Rogers, Plaintiff	:	CIVIL ACTION NO. 1:CV-88-1558
v.	:	
METROPOLITAN EDISON COMPANY, *et al.*, Defendants	:	

ORDER

In accordance with the accompanying memorandum, **IT IS HEREBY ORDERED THAT** Defendants' motion for summary judgment as to punitive damages is **DENIED.**

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO, Chief Judge
Middle District of Pennsylvania

Dated: February 18, 1994.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE TMI LITIGATION CONSOLIDATED PROCEEDINGS This Document Relates to: All Plaintiffs	:	CIVIL ACTION NO. 1:CV-88-1452
* *	*	* *
IN RE RMI LITIGATION CONSOLIDATED TOURISM CASES This Document Relates to: All Plaintiffs	:	CIVIL ACTION NO. 1:CV-88-1551
* *	*	* *
HYLAND ROGERS, Administratrix of the Estate of James W. Rogers, Plaintiff v. METROPOLITAN EDISON COMPANY, *et al.*, Defendants	:	CIVIL ACTION NO. 1:CV-88-1558

MEMORANDUM AND ORDER

Before the court is Defendants' renewed motion to certify for interlocutory appeal this court's orders of February 18, 1994 relating to the availability of punitive damages and to the applicable standard of care in these public liability actions. Briefs have been filed and the motion is ripe for disposition.

Discussion[1]

Title 42 U.S.C. § 1292(b) provides, in pertinent part:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may advance the ultimate termination of the litigation, he shall so state in writing in such order. . . . *Provided, however,* That application for the appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

42 U.S.C. § 1292(b).

Pursuant to § 1292(b), Defendants seek certification of the following questions:

> 1. Whether Pennsylvania's rules of decision relating to punitive damages are inconsistent with the provisions of the federal Price-Anderson Act, as amended, and therefore may not serve as rules of decision to be applied in a "public liability action" under the Price-Anderson Act;
>
> 2. Whether 10 C.F.R. §§ 20.105 and 20.106, and not ALARA,[2] constitute the standard of care to be applied in these actions; and
>
> 3. Whether those standards are breached as to a plaintiff who was not exposed to levels of radiation or radioactive effluents in excess of those limits.

(Mot. at 2.)

Defendants previously filed separate motions for certification of the punitive damages and duty issues. By order dated April 20, 1994, this court denied the motions for certification.

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1. The background of these cases has been set forth in numerous previous memoranda and orders and will not be repeated here.

2. ALARA refers to the regulatory provision admonishing licensees to "exert [their] best efforts to keep levels of radioactive material in effluents *as low as is reasonably achievable.*" 10 C.F.R. § 50.36a(b) (emphasis added).

At that time, an initial trial of twelve Plaintiffs was slated for October 1994. Subsequently, the trial date has been moved to April 1995. Defendants' renewed request is based on this change of circumstance.

At this point, the court is inclined to grant Defendants' request. First, the foregoing issues are controlling legal questions and, especially with respect to the punitive damages issue, there is a substantial ground for difference of opinion.[3] The questions presented are issues of first impression in this circuit and, in some respects, throughout the country.

Second, immediate appellate review of these issues is likely to substantially advance the ultimate termination of the instant litigation. With trial now scheduled for April 1995, the delay in trial, if any, associated with an appeal is likely to be slight in comparison to the advantages conferred by clarification of these controlling legal issues. The parties have indicated that trial of the claims of the initial twelve Plaintiffs is likely to last several months. If punitive damages are not at issue, however, the trial is likely to be greatly simplified and significantly shorter in duration. Further, a clarification of the duty owed would eliminate the possibility that the use of an improper legal standard would confuse the jury or require a new trial. The initial trial of twelve Plaintiffs is likely to have little predictive value if tried under an improper legal standard. Accordingly, the court will permit the interlocutory appeal of the foregoing issues with one caveat.

The court is not satisfied with the third issue as stated and will rephrase it to state more clearly the issues raised by the summary judgment motion. In its February 22, 1994 order, this court concluded that the regulations setting permissible release levels for radiation and radioactive emissions set the applicable standard of care. In so concluding, the court rejected Defendants' contention that a breach of duty could be established only by demonstrating that a particular Plaintiff

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3. In an earlier round of litigation arising out of the Three Mile Island accident, this court certified the punitive damages issue for interlocutory appeal. The Third Circuit permitted the appeal but, finding federal jurisdiction lacking, never addressed the merits of the punitive damages issue. *See Kiick v. Metropolitan Edison Co.*, 784 F.2d 490 (3d Cir. 1986).

had been exposed to radiation in levels in excess of the applicable regulations. This court concluded that while the level of exposure of a particular Plaintiff likely would be highly relevant and probative of causation, it had no relevance to the duty owed and whether that duty was breached. Given the difficulties in determining the precise effects of radiation on humans, defining duty solely in terms of emission levels makes eminent sense.

Accordingly, the third question the court will certify to the Third Circuit is:

> Whether a particular Plaintiff's level of exposure to radiation or radioactive effluents relates solely to causation or also to the duty owed by Defendants.

The court is persuaded that this question more accurately states the disputed issue.

Finally, while the court is certifying the foregoing issues for interlocutory appeal, it does not intend to permit the appeal to substantially delay this case. Therefore, the parties should plan on a trial of *all* issues in April 1995. Discovery with respect to all issues, including punitive damages, should continue as previously indicated by the court.

In light of the certification of the punitive damages issue, the court will dismiss Defendants' motions for continued bifurcation of punitive damage claims and for certification of a mandatory punitive class pending disposition of the appeal. This dismissal is without prejudice to Defendants to seek reinstatement of the motions, if relevant, after disposition of the interlocutory appeal.

Accordingly, **IT IS HEREBY ORDERED THAT:**

(1) Defendants' May 20, 1994 renewed motion for certification is **GRANTED.**

(a) This court's order of February 18, 1994 relating to punitive damages is amended by adding the following:

> **This court hereby certifies that the following is a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal of this issue may advance the ultimate termination of the instant litigation:**

Whether Pennsylvania's rules of decision relating to punitive damages are inconsistent with the provisions of the federal Price-Anderson Act, as amended, and therefore may not serve as rules of decision to be applied in a "public liability action" under the Price-Anderson Act.

(b) This court's order of February 18, 1994 relating to the duty owed by Defendants is amended by adding the following:

(3) This court hereby certifies that the following are controlling questions of law as to which there is a substantial ground for difference of opinion and that an immediate appeal of these issues may advance the ultimate termination of the instant litigation:

a. Whether 10 C.F.R. §§ 20.105 and 20.106, and not ALARA, constitute the standard of care to be applied in these actions; and

b. Whether a particular Plaintiff's level of exposure to radiation or radioactive effluents relates solely to causation or also to the duty owed by Defendants.

(2) Defendants' motions for continued bifurcation of punitive damage claims and for certification of a mandatory punitive class are **DISMISSED** without prejudice to Defendants to seek reinstatement of the motions after disposition of their interlocutory appeal.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO, Chief Judge
Middle District of Pennsylvania

Dated: July 13, 1994.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

August 5, 1994
#B-15

No. 94-8053

IN RE TMI LITIGATION CASES CONSOLIDATED II
(Related to MD (Harrisburg) Civil 1:CV-88-1452)

PRESENT: STAPLETON, SCIRICA and ROTH, *Circuit Judges.*

Petition for allowance of an interlocutory appeal pursuant to 28 U.S.C. §1292(b),

/s/ Angela Perricone
Angela Perricone 597-1092
Deputy Clerk

See 94-8054, #B-16

ORDER

The foregoing petition is granted.

By the Court,

/s/ Walter K. Stapleton
Circuit Judge

Dated: August 25, 1994

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 94-7600, 94-7601, 94-7602

IN RE: TMI

METROPOLITAN EDISON COMPANY ("MET ED");
PENNSYLVANIA ELECTRIC COMPANY;
JERSEY CENTRAL POWER & LIGHT COMPANY;
GENERAL PUBLIC UTILITIES CORP.;
BABCOCK & WILCOX CO.;
MCDERMOTT, INC.;
DRESSER INDUSTRIES, INC.;
UE & C - CATALYTIC, INC. (RAYTHEON);
BURNS & ROE ENTERPRISES,
Appellants Nos. 94-7600/7601

METRO EDISON COMPANY ("MET ED");
PENNSYLVANIA ELECTRIC COMPANY;
JERSEY CENTRAL POWER & LIGHT COMPANY;
GENERAL PUBLIC UTILITIES CORP.;
BABCOCK & WILCOX CO.;
MCDERMOTT, INC.;
DRESSER INDUSTRIES, INC.;
UE & C - CATALYTIC, INC. (RAYTHEON);
BURNS & ROE ENTERPRISES,
Appellants No. 94-7602

SUR PETITION FOR REHEARING

Present: SLOVITER, *Chief Judge,*
BECKER, STAPLETON, MANSMANN, GREENBERG, SCIRICA,
COWAN, NYGAARD, ALITO, ROTH, LEWIS, MCKEE
and SAROKIN,
Circuit Judges.

The petition for rehearing filed by appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available

circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied. Judge Becker would have granted rehearing.

BY THE COURT,

/s/ Theodore A. McKee
Circuit Judge
Hon. Theodore A. McKee

DATED: November 21, 1995

§ 2210. Indemnification and limitation of liability

(a) Requirement of financial protection for licensees

Each license issued under section 2133 or 2134 of this title and each construction permit issued under section 2235 of this title shall, and each license issued under section 2073, 2093, or 2111 of this title may, for the public purposes cited in section 2012(i) of this title, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Nuclear Regulatory Commission (in this section referred to as the "Commission") in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection (b) of this section to cover public liability claims. Whenever such financial protection is required, it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection (c) of this section. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

(b) Amount and type of financial protection for licensees

(1) The amount of primary financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (A) the cost and terms of private insurance, (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (C) the nature and purpose of the licensed activity: *Provided,* That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (excluding the amount of private liability insurance available

under the industry retrospective rating plan required in this subsection). Such primary financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided,* That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such primary financial protection: *And provided further,* That the maximum amount of the standard deferred premium that may be charged a licensee following any nuclear incident under such a plan shall not be more than $63,000,000 (subject to adjustment for inflation under subsection (t) of this section), but not more than $10,000,000 in any 1 year, for each facility for which such licensee is required to maintain the maximum amount of primary financial protection: *And provided further,* That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection (*o*)(1)(D) of this section, payment of which has not been authorized under such subsection) arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this chapter shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission.

(2)(A) The Commission may, on a case by case basis, assess annual deferred premium amounts less than the standard annual deferred premium amount assessed under paragraph (1)—

(i) for any facility, if more than one nuclear incident occurs in any one calendar year; or

(ii) for any licensee licensed to operate more than one facility, if the Commission determines that the financial impact of assessing the standard annual deferred premium amount under paragraph (1) would result in undue financial hardship to such licensee or the ratepayers of such licensee.

(B) In the event that the Commission assesses a lesser annual deferred premium amount under subparagraph (A), the Commission shall require payment of the difference between the standard annual deferred premium assessment under paragraph (1) and any such lesser annual deferred premium assessment within a reasonable period of time, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the standard annual deferred premium assessment under paragraph (1) would become due.

(3) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including

without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

(4)(A) In the event that the funds available to pay valid claims in any year are insufficient as a result of the limitation on the amount of deferred premiums that may be required of a licensee in any year under paragraph (1) or (2), or the Commission is required to make reinsurance or guaranteed payments under paragraph (3), the Commission shall, in order to advance the necessary funds—

(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

(B) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), any funds appropriated under subparagraph (A)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by standard deferred premium assessments, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated under such subparagraph are made available.

(C) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by standard deferred premium assessments. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Sec-

retary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of Title 31 and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(c) Indemnification of licenses by Nuclear Regulatory Commission

The Commission shall, with respect to licenses issued between August 30, 1954 and August 1, 2002, for which it requires financial protection of less than $560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 excluding costs of investigating and settling claims and defending suits for damage: *Provided, however,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2002, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2002.

(d) Indemnification of contractors by Department of Energy

(1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the "Secretary") may

have, the Secretary shall, until August 1, 2002, enter into agreements of indemnification under this subsection with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability and that are not subject to financial protection requirements under subsection (b) of this section or agreements of indemnification under subsection (c) or (k) of this section.

(B)(i)(I) Beginning 60 days after August 20, 1988, agreements of indemnification under subparagraph (A) shall be the exclusive means of indemnification for public liability arising from activities described in such subparagraph, including activities conducted under a contract that contains an indemnification clause under Public Law 85-804 [50 U.S.C.A. § 1431 et seq.] entered into between August 1, 1987, and August 20, 1988.

(II) The Secretary may incorporate in agreements of indemnification under subparagraph (A) the provisions relating to the waiver of any issue or defense as to charitable or governmental immunity authorized in subsection (n)(1) of this section to be incorporated in agreements of indemnification. Any such provisions incorporated under this subclause shall apply to any nuclear incident arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A).

(ii) Public liability arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A) that are funded by the Nuclear Waste Fund established in section 10222 of this title shall be compensated from the Nuclear Waste Fund in an amount not to exceed the maximum amount of financial protection required of licensees under subsection (b) of this section.

(2) In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the aggre-

gate public liability of the persons indemnified for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

(3)(A) Notwithstanding paragraph (2), if the maximum amount of financial protection required of licensees under subsection (b) of this section is increased by the Commission, the amount of indemnity, together with any financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection (b) of this section.

(B) The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

(C) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person, shall be deemed to be amended, on August 20, 1988, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on August 20, 1988.

(4) Financial protection under paragraph (2) and indemnification under paragraph (1) shall be the exclusive means of financial protection and indemnification under this section for any Department of Energy demonstration reactor licensed by the Commission under section 5842 of this title.

(5) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed $100,000,000.

(6) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

(7) A contractor with whom an agreement of indemnification has been executed under paragraph (1)(A) and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this subsection, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as

principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

(e) Limitation on aggregate public liability

(1) The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection (*o*)(1)(D) of this section, shall not exceed—

(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the maximum amount of financial protection required of such facilities under subsection (b) of this section (plus any surcharge assessed under subsection (*o*)(1)(E) of this section);

(B) in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection (d) of this section, the maximum amount of financial protection required under subsection (b) of this section or the amount of indemnity and financial protection that may be required under paragraph (3) of subsection (d) of this section, whichever amount is more; and

(C) in the case of all other licensees of the Commission required to maintain financial protection under this section—

(i) $500,000,000, together with the amount of financial protection required of the licensee; or

(ii) if the amount of financial protection required of the licensee exceeds $60,000,000, $560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

(2) In the event of a nuclear incident involving damages in excess of the amount of aggregate public liability under paragraph (1), the Congress will thoroughly review the particular incident in accordance with the procedures set forth in subsection (i) of this section and will in accordance with such

procedures, take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to subsection (b) of this section, to fund any action undertaken pursuant to paragraph (2).

(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection (d) of this section is applicable, such aggregate public liability shall not exceed the amount of $100,000,000, together with the amount of financial protection required of the contractor.

(f) Collection of fees by Nuclear Regulatory Commission

The Commission or the Secretary, as appropriate, is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 2133 of this title: *Provided,* That the Commission or the Secretary, as appropriate, is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of $60,000,000. For facilities licensed under section 2134 of this title, and for construction permits under section 2235 of this title, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 2134 of this title, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.

(g) Use of services of private insurers

In administering the provisions of this section, the Commission or the Secretary, as appropriate, shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission or the Secretary, as appropriate, may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 5 of Title 41 upon a showing by the Commission or the Secretary, as appropriate, that advertising is not reasonably practicable and advance payments may be made.

(h) Conditions of agreements of indemnification

The agreement of indemnification may contain such terms as the Commission or the Secretary, as appropriate, deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission or the Secretary, as appropriate, makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission or the Secretary, as appropriate, shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission or the Secretary, as appropriate, shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this chapter. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.

(i) Compensation plans

(1) After any nuclear incident involving damages that are likely to exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section, the Secretary or the Commisison, as appropriate, shall—

(A) make a survey of the causes and extent of damage; and

(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

(2) Not later than 90 days after any determination by a court, pursuant to subsection (*o*) of this section, that the public liability from a single nuclear incident may exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section the President shall submit to the Congress—

(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of aggregate public liability under subsection (e)(1) of this section;

(B) recommendations for additional sources of funds to pay claims exceeding the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section, which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied);

(C) 1 or more compensation plans, that either individually or collectively shall provide for full and prompt compensation for all valid claims and contain a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the payment of claims that may arise as a result of latent injuries that may not be discovered until a later date; and

(D) any additional legislative authorities necessary to implement such compensation plan or plans.

(3)(A) Any compensation plan transmitted to the Congress pursuant to paragraph (2) shall bear an identification

number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(B) The provisions of paragraphs (4) through (6) shall apply with respect to consideration in the Senate of any compensation plan transmitted to the Senate pursuant to paragraph (2).

(4) No such compensation plan may be considered approved for purposes of subsection (e)(2) of this section unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to the Senate, the Senate passes a resolution described in paragraph 6 of this subsection.

(5) For the purpose of paragraph (4) of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day calendar period.

(6)(A) This paragraph is enacted—

(i) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by subparagraph (B) and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of the Senate to change the rules at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(B) For purposes of this paragraph, the term "resolution" means only a joint resolution of the Congress the matter after the resolving clause of which is as follows: "That the approves the compensation plan numbered submitted to the Congress on , 19 .", the first blank

space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one compensation plan.

(C) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate.

(D)(i) If the committee of the Senate to which a resolution with respect to a compensation plan has been referred has not reported it at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

(ii) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(iii) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

(E)(i) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall

not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(ii) Debate on the resolution referred to in clause (i) of this subparagraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(F)(i) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

(ii) Appeals from the decision of the Chair relating to the application of the rules of the Senate to the procedures relating to a resolution shall be decided without debate.

(j) Contracts in advance of appropriations

In administering the provisions of this section, the Commission or the Secretary, as appropriate, may make contracts in advance of appropriations and incur obligations without regard to sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of Title 31.

(k) Exemption from financial protection requirement for nonprofit educational institutions

With respect to any license issued pursuant to section 2073, 2093, 2111, 2134(a), or 2134(c) of this title, for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection (a) of this section. With respect to licenses issued between August 30, 1954, and August 1, 2002, for which the Commission grants such exemption:

(1) The Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in

excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including such legal costs of the licensee as are approved by the Commission;

(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2002, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1,2002.

(*l*) Presidential commission on catastrophic nuclear accidents

(1) Not later than 90 days after August 20, 1988, the President shall establish a commission (in this subsection referred to as the "study commission') in accordance with the Federal Advisory Committee Act (5 U.S.C.App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection (e)(1) of this section.

(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who—

(i) shall be appointed by the President; and

(ii) shall be representative of a broad range of views and interests.

(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

(E) The President shall designate one of the members of the study commission as chairperson, to serve at the pleasure of the President.

(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection (e)(1) of this section, and shall submit to the Congress a final report setting forth—

(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study

commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C.App.) and Title 5.

(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

(E) Each member of the study commission may receive compensation at the maximum rate prescribed by the Federal Advisory Committee Act (5 U.S.C.App.) for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of Title 5.

(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C.App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on August 20, 1988.

(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.

(m) Coordinated procedures for prompt settlement of claims and emergency assistance

The Commission or the Secretary, as appropriate, is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission or the Secretary, as appropriate, and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission or the Secretary, as appropriate, shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

(n) Waiver of defenses and judicial procedures

(1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

(A) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility,

(B) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility,

(C) during the course of the contract activity arises out of or results from the possession, operation, or use by a Department of Energy contractor or subcontractor of a device utilizing special nuclear material or byproduct material,

(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 2073, 2093, or 2111 of this title, for which the Commission has imposed as a condition of

the license a requirement that the licensee have and maintain financial protection under subsection (a) of this section,

(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 2073, 2093, or 2111 of this title, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection (a) of this section, or

(F) arises out of, results from, or occurs in the course of nuclear waste activities.

the Commission or the Secretary, as appropriate, may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforcible in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as

proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection (e) of this section.

(2) With respect to any public liability action arising out of or resulting from a nuclear incident, the United States district court in the district where the nuclear incident takes place, or in the case of a nuclear incident taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission, or the Secretary, as appropriate, any such action pending in any State court (including any such action pending on August 20, 1988) or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of Title 28, or within the 30-day period beginning on August 20, 1988, whichever occurs later.

(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the "management panel") to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

> **(i)** a court, acting pursuant to subsection (*o*) of this section, determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection (b) of this section (or an equivalent amount in the case of a contractor indemnified under subsection (d) of this section); or

(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

(C) It shall be the function of each management panel—

(i) to consolidate related or similar claims for hearing or trial;

(ii) to establish priorities for the handling of different classes of cases;

(iii) to assign cases to a particular judge or special master;

(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.

(*o*) Plan for distribution of funds

(1) Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear

incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under the applicable limit of liability under subparagraph (A), (B), or (C) of subsection (e)(1) of this section:

(A) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(B) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (C); and

(C) The Commission or the Secretary, as appropriate, shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission or the Secretary as appropriate, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of

court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States.

(D) A court may authorize payment of only such legal costs as are permitted under paragraph (2) from the amount of financial protection required by subsection (b) of this section.

(E) If the sum of public liability claims and legal costs authorized under paragraph (2) arising from any nuclear incident exceeds the maximum amount of financial protection required under subsection (b) of this section, any licensee required to pay a standard deferred premium under subsection (b)(1) of this section shall, in addition to such deferred premium, be charged such an amount as is necessary to pay a pro rata share of such claims and costs, but in no case more than 5 percent of the maximum amount of such standard deferred premium described in such subsection.

(2) A court may authorize the payment of legal costs under paragraph (1)(D) only if the person requesting such payment has—

(A) submitted to the court the amount of such payment requested; and

(B) demonstrated to the court—

(i) that such costs are reasonable and equitable; and

(ii) that such person has—

(I) litigated in good faith;

(II) avoided unnecessary duplication of effort with that of other parties similarly situated;

(III) not made frivolous claims or defenses; and

(IV) not attempted to unreasonably delay the prompt settlement or adjudication of such claims.

(p) Reports to Congress

(1) The Commission and the Secretary shall submit to the Congress by August 1, 1998, detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

(2) Not later than April 1 of each year, the Commission and the Secretary shall each submit an annual report to the Congress setting forth the activities under this section during the preceding calendar year.

(q) Limitation on awarding of precautionary evacuation costs

No court may award costs of a precautionary evacuation unless such costs constitute a public liability.

(r) Limitation on liability of lessors

No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.

(s) Limitation on punitive damages

No court may award punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.

(t) Inflation adjustment

(1) The Commission shall adjust the amount of the maximum standard deferred premium under subsection (b)(1) of

this section not less than once during each 5-year period following August 20, 1988, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) August 20, 1988, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

(2) For purposes of this subsection, the term "Consumer Price Index" means the Consumer Price index for all urban consumers published by the Secretary of Labor.

§ 2014. Definitions

The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this chapter:

(a) The term "agency of the United States" means the executive branch of the United States, or any Government agency, or the legislative branch of the United States, or any agency, committee, commission, office, or other establishment in the legislative branch, or the judicial branch of the United States, or any office, agency, committee, commission, or other establishment in the judicial branch.

(b) The term "agreement for cooperation" means any agreement with another nation or regional defense organization authorized or permitted by sections 2074, 2077, 2094, 2112, 2121(c), 2133, 2134, or 2164 of this title, and made pursuant to section 2153 of this title.

(c) The term "atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

(d) The term "atomic weapon" means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

(e) The term "byproduct material" means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(f) The term "Commission" means the Atomic Energy Commission.

(g) The term "common defense and security" means the common defense and security of the United States.

(h) The term "defense information" means any information in any category determined by any Government agency authorized to classify information, as being information respecting, relating to, or affecting the national defense.

(i) The term "design" means (1) specifications, plans, drawings, blueprints, and other items of like nature; (2) the information contained therein; or (3) the research and development data pertinent to the information contained therein.

(j) The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, and which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or "the contract location" as defined in the applicable Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, indemnity agreement, entered into pursuant to section 2210 of this title.

(k) The term "financial protection" means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages.

(l) The term "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

(m) The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 2210 of this title.

(n) The term "international arrangement" means any international agreement hereafter approved by the Congress or any treaty during the time such agreement or treaty is in full force and effect, but does not include any agreement for cooperation.

(o) The term "Energy Committees" means the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(p) The term "licensed activity" means an activity licensed pursuant to this chapter and covered by the provisions of section 2210(a) of this title.

(q) The term "nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in section 2210(1) of this title, it shall include any such occurrence outside the United States:

And provided further, That as the term is used in section 2210(d) of this title, it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further,* That as the term is used in section 2210(c) of this title, it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to subchapters V, VI, VII, and IX of this division, which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission to another person licensed by the Nuclear Regulatory Commission.

(r) The term "operator" means any individual who manipulates the controls of a utilization or production facility.

(s) The term "person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(t) The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in section 2210(c) of this title, and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who

may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 2210(d) of this title has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

(u) The term "produce", when used in relation to special nuclear material, means (1) to manufacture, make, produce, or refine special nuclear material; (2) to separate special nuclear material from other substances in which such material may be contained; or (3) to make or to produce new special nuclear material.

(v) The term "production facility" means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission. Except with respect to the export of a uranium enrichment production facility or the construction and operation of a uranium enrichment production facility using Atomic Vapor Laser Isotope Separation technology, such term as used in subchapters IX and XV of this division shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

(w) The term "public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation), except: (i) claims

under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections (a), (c), and (k) of section 2210 of this title, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: *Provided,* That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

(x) The term "research and development" means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(y) The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 2162 of this title.

(z) The term "source material" means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 2091 of this title to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

(aa) The term "special nuclear material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 2071 of this

title, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(bb) The term "United States" when used in a geographical sense includes all Territories and possessions of the United States, the Canal Zone and Puerto Rico.

(cc) The term "utilization facility" means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

(dd) The terms "high-level radioactive waste" and "spent nuclear fuel" have the meanings given such terms in section 10101 of this title.

(ee) The term "transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

(ff) The term "nuclear waste activities", as used in section 2210 of this title, means activities subject to an agreement of indemnification under subsection (d) of such section, that the Secretary of Energy is authorized to undertake, under this chapter or any other law, involving the storage, handling, transportation, treatment, or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be

carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164 (93 Stat. 1265).

(gg) The term "precautionary evacuation" means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is—

(1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and

(2) initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an evacuation and who reasonably determined that such an evacuation was necessary to protect the public health and safety.

(hh) The term "public liability action", as used in section 2210 of this title, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 2210 of this title, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

(jj) Legal Costs

As used in section 2210 of this title, the term "legal costs" means the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling, or defending claims or suits for damage arising under such section.

Effective Date of 1988 Amendments

Section 20 of Pub.L. 100-408 provides:

(a) Except as provided in subsection (b), the amendments made by this Act shall become effective on the date of the enactment of this Act [Aug. 20, 1988] and shall be applicable with respect to nuclear incidents occurring before, on, or after the date of the enactment of this Act [Aug. 20, 1988].

(b)(1) the amendments made by section 11 [enacting subsec. (hh) and (jj) of this section and section 2210(m)(2) and (o) of this title] shall apply to nuclear incidents occurring before, on, or after the date of the enactment of this Act [Aug. 20, 1988].

PETITIONERS' RULE 29.6 STATEMENT

PETITIONER

General Public Utilities Corp.

Parent: N/A

Subsidiaries Not Wholly Owned: N/A

Jersey Central Power & Light Co.

Parent: General Public Utilities Corp.

Subsidiaries Not Wholly Owned: Saxton Nuclear Experimental Corp.

Metropolitan Edison Co.

Parent: General Public Utilities Corp.

Subsidiaries Not Wholly Owned: Saxton Nuclear Experimental Corp.

Pennsylvania Electric Co.

Parent: General Public Utilities Corp.

Subsidiaries Not Wholly Owned: Saxton Nuclear Experimental Corp.

Raytheon Constructors Inc.

Parent: Raytheon Constructors International, Inc.

Subsidiaries Not Wholly Owned: Catalytic Industrial Maintenance Company, Inc.; Specialty Technical Services, Inc.

McDermott Incorporated

Parent: McDermott International, Inc.

Subsidiaries Not Wholly Owned: Universal Fabricators Incorporated; Dyn McDermott Petroleum Operations Company

Babcock & Wilcox Company

Parent: Babcock & Wilcox Investment Company

Subsidiaries Not Wholly Owned: Babcock & Wilcox Services, Inc.; KBW Gasification Systems, Inc.; Asea Babcock; South Point CWF; North American CWF Partnership; Palm Beach Energy Associates; North County Operations Associates

Burns & Roe Enterprises, Inc.

Parent: Roe Enterprises, Inc.

Subsidiaries Not Wholly Owned: Burns & Roe Worly, Limited; Lin & Roe Co., Ltd.; BRINESA, SA

Dresser Industries, Inc.

Parent: N/A

Subsidiaries Not Wholly Owned: Subsea Underwater Associates, Inc.

RESPONDENTS

D.C. Civ. No. 88-CV-1452

ABRAMS, FRED N; ABRAMS, HENRA H (ESTATE); ABROMITIS, JOY A; ABROMITIS, MICHAEL (ESTATE); ADAMS, HENRIETTA B (ESTATE); ADAMS, JEANETTE M; ADAMS, PATRICIA A; ADAMS, PATRICK R (MINOR); ADAMS, RAYMOND C (MINOR); ALBRIGHT, BLANCHE G; ALDER, RUTH E (ESTATE); ALDRICH, DOROTHY L; ALDRICH, WILLIAM A; ALLEMAN, FAITH E; ALLEMAN, GERALD C SR; ALMONEY, BYRON L; ALMONEY, GEORGIA S; ALMONEY, KYLE M (MINOR); ALTIGIERI, DENISE J; ALTIGIERI, VICTOR J; ALTLAND, GARY E; ALTLAND, KIMBERLY A (MINOR); ALTLAND, MELISSA A (MINOR); ALTLAND, MIRIAM E; ANDERSON, ANNABELLE S; ANDERSON, CARL; ANDERSON, GEORGE W; ANDERSON, GERALDYNE F; ANDERSON, GILBERT C; ANDERSON, PATRICK JR (ESTATE); ANDERSON, PEARL E; ANGELI, JOHANNA; ANGELI, PHILIP (ESTATE); ANOKA, MICHAEL J; ANOKA, RUTH V; ANTHONY, DONALD S; ANTHONY, MARIAN (ESTATE); APPLE, BETTY; APPLE, DORIS J; APPLE, EDWARD R; APPLE, NATHAN D; APPLEBY, SALLIE J; ARMSTRONG, JOAN M; ARMSTRONG, JOHN F; ARMSTRONG, MILES C JR; ARMSTRONG, SYBIL (MINOR); ARMSTRONG, WALTER O; ARNDT, EDWARD P JR; ARNDT, KATHY J; ARNOLD, DORIS J; ARNOLD, RODNEY C; AUCKER, JAYNE L; AUNGST, BEN (MINOR); AUSTIN, JOHN E; AUSTIN, JUANITA F (ESTATE); BAIR, JUDITH G (ESTATE); BAIR, RONALD A; BAKARIC, NICHOLAS G; BAKER, H RICHARD; BAKER, MARGARET V (ESTATE); BALCHUNAS, KAY L; BALCHUNAS, RALPH E; BALINOSKY, CATHERINE J; BALINOSKY, LAURI A; BALOG, EUGENE T; BALOG, LORAINE A; BALTOZER, JOSEPH W; BALTOZER, KATHY S; BANKS, FLORENCE E; BARBUSH, JOANN M; BARBUSH, SISTINO R III; BARBUSH, TODD J (MINOR); BARNINGER, JACQUE I; BARNINGER, JOHN T (MINOR); BARR, ALAN E; BARR, KENNETH R (MINOR); BARR, LISA M (MINOR)(ESTATE); BARR, RYAN M (MINOR); BARR, SALLY B; BARRY, BELLE E; BARRY, BURRELL H JR (ESTATE); BARRY, BURRELL H SR (ESTATE); BARRY, RUTH J; BATCHELDER, EDWARD P; BATCHELDER, MARGARET W; BATURIN, FLOYD M; BATURIN, KERSTI R; BAUCUM, JASON E (MINOR); BAUGHMAN, WALTER J; BEAM, JULIA; BEAM, LEO

R (ESTATE); BEAR, ROBERT E; BEASLEY, BEATRICE C; BEASLEY, REGIS E; BEATTY, ELVERSON L; BEATTY, TRACY A (MINOR); BEAVER, DAVID V; BEAVER, JAMES J; BEAVER, JANE A; BEAVER, RITA E (ESTATE); BEAVER, SHANNON I (MINOR); BEAVER, SHARON K; BECK, ALFRED T; BECK, AMELIA D; BECK, CHRISTOPHER D (MINOR); BECK, DEBRA K; BECK, EARL J; BECK, GRACE L; BECK, HARRY JR (ESTATE); BECK, JANIE D; BECK, JARED H (MINOR); BECK, JENNIFER E (MINOR); BECK, NICHOLAS A (MINOR); BECK, ROGER D; BEHNEY, MAE L (ESTATE); BEHNEY, WILLIAM H; BELL, MARIE W (ESTATE); BELL, THOMAS F; BENDER, JOHN E JR; BENDER, SUZANNE D; BENNIE, CASSA L; BENNIE, JUSTIN K (MINOR); BENNIE, LORI A (MINOR); BENNIE, RICHARD K; BENTZ, AARA J (MINOR); BENTZ, JUANITA V; BEREZ, GILDA; BEREZ, HARRY H (ESTATE); BERGER, HARRY L (ESTATE); BERGER, JANE A; BERNSTEIN, JEROME J; BERNSTEIN, NATALIE R; BERRY, CHARLES E; BERRY, GLORIA E (ESTATE); BESHORE, CHARLES L; BESHORE, RAE L (ESTATE); BESHORE, THELMA A; BESHORE, WALTER A; BICKLE, MICHAEL R (MINOR); BIGLER, ANNA M; BISHOP, DEIDRE L (ESTATE); BITNER, DAVID H; BITNER, SUSAN L; BLACK, ERIN E (MINOR); BLACK, GEOFFREY L; BLACK, LYNN B; BLACK, RACHEL L (MINOR); BLACK, SUZANNE G; BLACK, TIMOTHY J; BLAIR, PAUL J; BLAIR, SHERRY A (ESTATE); BLOOM, NATHAN; BLOOM, ROSALIND D (ESTATE); BLOUGH, JANE M; BLOUGH, OSCAR L SR; BODAN, LOUISE A; BODAN, STANLEY C; BOGLOVITS, JOHN C; BOLAN, PAULA E; BOLAND, SUZANNE W (ESTATE); BONETTI, SANTO J; BONETTI, STEPHANIE A; BOOK, BETTY J; BORDA, CATHARINE M; BORDA, JENNIE C; BORDA, LOUIS (ESTATE); BORDA, RODNEY L; BORRELLI, CAROL L; BORRELLI, JOHN A; BOSWORTH, RAYMOND; BOSWORTH, RUTH M; BOTTS, DEBRA A; BOTTS, NICOLE L (MINOR); BOWER, JOHN M; BOWER, MARY E; BOYER, DORIS J; BOYLES, A JEAN; BOYLES, CHARLES E (ESTATE); BOYLSTEIN, BETTY M; BOYLSTEIN, GEORGE L (ESTATE); BRACALE, JAMES A SR (ESTATE); BRADDOCK, KATHLEEN E; BRADERMAN, RANDI B (MINOR); BRADERMAN, ROSLYN S; BRADERMAN, SARI A (MINOR); BRANNON, JAMES T; BRANNON, JENNIFER D (MINOR); BRANNON, TER-

ESA C; BRAUTIGAM, DIANE M; BRAUTIGAM, ROBERT E; BRAUTIGAM, ROBERT E III (MINOR); BRECKENMAKER, MAE E; BRENNEMAN, BARBARA A; BRENNEMAN, WILLIAM E (ESTATE); BRENNER, LENARD A; BRESKI, DELORES J; BREZITSKI, IRENE M; BRIGGS, CHRISTINE; BRIGGS, CONNIE T (ESTATE); BRINSER, CHARLES V; BRINSER, HAROLD W; BRINSER, HELEN E; BROCKMAN, GERALD A (ESTATE); BROCKMAN, JACQUELINE; BRODY, LAWRENCE E; BRODY, VERNA L; BROOKS, CATHERINE R; BROOKS, SHARON R; BROOKS, SONYA; BROWN, BETTY R; BROWN, CHERYL O; BROWN, CHRISTINE M; BROWN, CLAUDE H; BROWN, ELMER B (ESTATE); BROWN, PATRICIA E; BROWN, THOMAS E; BROWN, WANDA H; BRUBACHER, GENE A SR (ESTATE); BRUBACHER, HOWARD E (ESTATE); BRUBACHER, PEGGY L; BRUBACHER, TERESA A; BRUETSCH, HAROLD L; BRUETSCH, JEAN B; BRUNNER, CURTIS J; BRUNNER, FRANCIS H (ESTATE); BRUNNER, KAREN E; BRUNNER, ROBERTA M; BRUNO-COHEN, NANCY; BRUSSESE, DARLA M; BRUSSESE, MICHAEL A (MINOR); BRUSSESE, STEVEN A; BRYAN, THEODORE A; BRYAN, ZOLA L (ESTATE); BRYDON, DEBRA L; BRYNER, JOHN D JR (MINOR)(ESTATE); BRYNER, JOHN D SR; BRYNER, TAMARA L; BUCHART, RONALD E; BUCK, ANTOINETTE; BUCK, BARRY P; BUCK, BECKY (MINOR); BUCK, NATHAN (MINOR); BUEHLER, RICHARD R; BUEHLER, SHARON A; BULLOCK, MARY L; BULLOCK, ROBERT C; BUNTIN, MARIE K; BUNTIN, WILLIAM M; BURDICK, KATHERINE R; BURDICK, LANN K; BURGER, ANNA M; BURGER, VERNON F; BURHANAN, CHARLES H SR; BURHANAN, SHIRLEAN; BURKHARDT, KARL N; BURKHARDT, PATRICIA L; BUSSER, MARGARET E (ESTATE); BUSSER, MARSHALL C; BUTLER, MILTON A (ESTATE); BUTLER, RUTH E; BYERS, GEORGIA W (ESTATE); BYERS, HELEN E; BYERS, TERRY L; CAKA, ALBERT W; CAKA, FRANK J (ESTATE); CAMPBELL, CARL A; CAMPBELL, JASON A (MINOR); CAMPBELL, PATRICIA; CAMPBELL, SHIRLEY F; CAMPBELL, WALTER; CANOY, CAROL J; CARNES, DEBRA R; CARNES, MARK P; CARRETTI, JOHN E; CARRETTI, MARY J; CARRIGAN, BONNIE L; CARRIGAN, JAMES D; CARRIGAN, MEGAN L (MINOR); CARRUTHERS, ASHLEY L (MINOR); CARRUTHERS, JOHN W II; CARRUTH-

ERS, SABRINA L (MINOR); CARRUTHERS, SHERRI L; CARTER, FAYE E; CARTER, JOHN T; CARTER, KAREN S; CARTER, RONALD R; CARUSO, ANNA L; CASPER, JOSEPH W (ESTATE); CASPER, JOSEPHINE M; CASSADAY, LINDA J; CASSATT, MARJORIE; CASSELL, PATRICIA A; CASSELL, ROBERT L SR (ESTATE); CERCE, CLIFF; CERCE, SANDRA; CHALLENGER, WILLIAM D; CHAMBERS, FRANK (ESTATE); CHAMBERS, KATHLEEN; CHANDLER, SAMUEL D JR; CHAVEY, ELIZABETH M; CHAVEY, MANUEL S; CHINA, SARAH M; CHINA, WALLACE W (ESTATE); CHRISTINE, WILLIAM H; CHRISTOFF, ROBERT J; CHUGG, ELLEN C; CHUGG, JAMES W; CHYNOWETH, DANIEL M; CHYNOWETH, KRISTOPHER (MINOR); CHYNOWETH, SUSAN H; CICAK, JEAN C (ESTATE); CICAK, JOSEPH; CIGIC, RUDOLPH M; CINI, VLADIMIR M; CLARK, DEBRA; CLAY, JENNIFER A; CLIPP, THOMAS E (ESTATE); COATES, BERNARD L SR; COATES, MARIE C; COBB, KIMBERLY J; COBLE, CARL A JR; COBLE, MARIE P; COBURN, DOROTHY J; COBURN, HARRY M (ESTATE); COHEN, DANIEL D; COHEN, FLORENCE L; COHEN, JEAN S; COHEN, LEONARD M (ESTATE); COHEN, PAUL J; COHEN, RENE B; COHEN, ROSE; COHEN, ROSLYN S; COHEN, SAMUEL S (ESTATE); COHLE, SHERI L; COLE, BEVERLY A (ESTATE); COLE, WILLIAM E; COLELLO, PETER M; COLEMAN, DANIEL A JR; COLEMAN, JAMES G; COLEMAN, MARGARET E; COLLIER, CHARLENE; COLLIER, HERBERT; COLLIER, TIFFANY H (MINOR); COLLINS, JEAN H (ESTATE); COLLINS, PATRICK M; COMFORT, ANNA M; COMFORT, LEE F (ESTATE); CONAHAN, GARY F; CONAHAN, MARY S (ESTATE); CONAHAN, ROBERT J (MINOR); CONLEY, DONALD H; CONLEY, JOHN I SR (ESTATE); CONLEY, LILLIAN M (ESTATE); CONLEY, PATRICIA E; CONRAD, CONSTANCE M; CONRAD, TIMOTHY D (MINOR); CONRAD, WILLIAM P SR (ESTATE); CONTRACT, ALEXANDER; CONTRACT, SYLVIA; COOKSEY, EVELINE; COOKSEY, THOMAS P (ESTATE); COOMBE, SHIRLEY M; COOPER, ADAIL (ESTATE); COOPER, BEASON; COOPER, THEODORE W; CORBIN, KIM L; CORBIN, LEROY; CORDERO, BARBARA A; CORMACK, SHAUNA (MINOR)(ESTATE); COSTELLO, CATHERINE M; COSTELLO, JOHN T (ESTATE); COSTIK, MARTHA A; COSTIK, RICHARD N; COTTON, REBECCA S; COTTON, WILLIE; COTTON, WILLIE L

JR (MINOR); COUTTS, PATRICIA A; CRAIG, E JAMES (ESTATE); CRAMER, HARRY L; CRAMER, M MAE; CRAWFORD, KAREN L; CRAWFORD, STEPHEN M; CRONIN-BOYLE, TANYA B; CROSS, FLOYD H SR (ESTATE); CROSS, MARY E; CROWL, SANDRA (AUNGST); CUNNINGHAM, DOROTHY; CUNNINGHAM, JORDAN B (MINOR); CUNNINGHAM, JORDAN D; CUNNINGHAM, KIMBERLY B; CUNNINGHAM, RICHARD M (ESTATE); CURTIS, CAROLYN E; CURTIS, DEBRA A (MINOR) (ESTATE); CUSHNER, CHRISTINE B; CUSHNER, MICHAEL R; CYWINSKI, ANTHONY A (ESTATE); CYWINSKI, CATHERINE D; CZAPLEWSKI, SHARON L; DACHEUX, ELIZABETH R; DACHEUX, ROBERT F; DAGENHART, OLGA E (ESTATE); DANKO, EMIL S; DANKO, MARJORIE M (ESTATE); DANNER, BONNIE L; DANNER, CONSTANCE K; DANNER, DIANE M; DANNER, JAMES M; DANNER, SAMUEL C; DANNER, SHERRI M; DARBY, DENISE S (MINOR); DARBY, ERIC S (MINOR); DARBY, PEGGY J; DARRAGH, BRIAN C (MINOR); DARRAGH, EDITH A; DARRAGH, JENNIFER J (MINOR); DARRAGH, RONALD G; DARRAGH, STEPHANIE A (MINOR)(ESTATE); DARROW, DANIEL D; DARROW, ELEANOR; DAUGHERTY, CATHY; DAUGHERTY, KIM; DAVIS, ANDREW G (MINOR); DEAVEN, BRENDA K; DEAVEN, JESSICA S (MINOR)(ESTATE); DEAVEN, JOSHUA P (MINOR); DEAVEN, WILLIAM E; DEIBERT, GEORGE L M (ESTATE); DEIBERT, PHILIP G; DEIBLER, JAMES R; DEIBLER, KAREN L; DEIBLER, KIMBERLY K (MINOR); DEIMLER, JOHN F; DEIMLER, MARLENE R; DEIMLER, MICHAEL D; DEINLER, ALICE E; DEINLER, RANDY W (ESTATE); DEINLER, WALTER E JR; DEMMY, LARRY R; DEMMY, PEARL I; DENGLER, ALBERT W; DENGLER, HILDA M; DENHAM, SHARYN G; DENHAM, WILLIAM S; DENONCOUR, NORA; DENONCOUR, VINCENT W; DEPASQUALE, GUY J; DEPASQUALE, JEAN; DESHNER, CHRYSTAL L (MINOR); DESHNER, FAYE A; DESHNER, LOUIS R; DESSO, CAROL A (ESTATE); DESSO, JOHN A (ESTATE); DESSO, MARGARET; DESSO, THOMAS D; DESTITO, AMY R; DESTITO, DANIEL S JR; DEWALT, MARGIE O; DEWALT, PARKER J; DICE, DOROTHY W; DICKERSON, FAY E; DICKERSON, FRITZ L; DIEHL, NANCY C; DIEHL, ROBERT E; DIMOFF, GEORGE (ESTATE); DIMOFF, MARGARET; DIVEN, ROBYN A; DIVEN, SCOTT A;

DIVEN, SCOTT A JR (MINOR); DIX, ARTHUR W (ESTATE); DIX, DOLORES A; DOBSON, IVESTER (ESTATE); DOBSON, MYRTLE C; DODSON, JONATHAN W SR; DODSON, LILLIAN M; DOLAN, DAVID L; DOLAN, LORI R; DONLEY, ALTA D; DONLEY, DEBORAH L; DONLEY, HAROLD M JR; DONLEY, HAROLD M SR; DORAZIO, JODIE M; DORMAN, HAROLD L; DORMAN, HAROLD LINN (ESTATE); DOUGLAS, LARRY A; DOUGLAS, PEARL E; DOYLE, NELLIE M; DRAKE, FREDERICK D; DRAKE, NANCY L; DRAKE, ROGER E (MINOR); DRAPALA, CHRISTINE M (MINOR); DRAPALA, HOLLY N (MINOR); DRAPALA, ROBERT V; DRAPALA, SANDRA L; DRUMHELLER, EDWARD C; DUDEK, BARBARA; DUDEK, EDWARD J; DUDEK, MATTHEW E (MINOR); DUDLEY, DORIS M; DUDLEY, JAMES R (ESTATE); DUNLEAVY, ANNETTE R; DUNLEAVY, THOMAS L; DURBIN, JOSEPH R; DURBIN, RUTH A (ESTATE); DURBOROW, JOSEPH P; DURBOROW, KAREN K; EARHART, M MARGUERITE; EDWARDS, CURTIS N JR; EDWARDS, FLORENCE A (ESTATE); EDWARDS, THEODORE R (ESTATE); EHRLICH, ANDREW J (MINOR); EHRLICH, CARL F; EHRLICH, MARGERY; EICHELBURGER, GEORGIA C; EICHELBURGER, GILBERT G; EICHERLY, CAROL J; EICHERLY, FRANK W III; EISLER, SANDRA L; EISNER, CHRISTINE M (MINOR); EISNER, GERALD L JR; EISNER, LOUELLA E; ELHAJJ, NANCY A; ELHAJJ, TAMMY R; ELHAJJ, THOMAS; ELHAJJ, THOMAS W (ESTATE); ELIA, JOYCE L (MINOR); ELIA, KAREN S; ELIA, VINCENT; ELLIOTT, FRANCES M; ELLIOTT, THEODORE J; ELLIOTT, TODD J (MINOR); ELLIOTT, TRACY A (MINOR); ELLIS, DORIS M; ELLIS, HOWARD D (ESTATE); ELLIS, KAY E; ELSLAGER, DEBRA J; ELSLAGER, EDWARD S III; EMERICK, MARY A; EMERICK, RAYMOND B (MINOR)(ESTATE); EMERICK, WILLIAM H; ENDERS, KEITH E; ENGLE, C DANIEL (ESTATE); ENGLE, EVA K; ENSMINGER, DAVID S JR; ERWIN, DORIS J; ERWIN, NORMAN L (ESTATE); ESPENSHADE, CHARLES A; ESPENSHADE, GLADYS (ESTATE); ETTINGER, LLOYD J; ETTINGER, MARGARET; EVANOFF, CHRIST JR (ESTATE); EVANOFF, ZELDA B; EVANS, HARRY J; EVANS, JAY W; EVANS, JEANNINE F; EVANS, LORETTA M; FABIAN, KATARINA M (ESTATE); FALCONE, MARTINA G; FANTINE, JOSEPH N; FANTINE, LINDA K; FARRELL, MARY ABOZARTH; FEESER,

ALDA J (ESTATE); FEESER, LLOYD T; FEGLEY, MARY L; FEGLEY, ROBERT G JR (ESTATE); FELTY, CORRINE E; FELTY, KENNETH E; FERENTZ, JOHN C (ESTATE); FERENTZ, RUTH I; FERGUSON, EDWARD T; FERNANDEZ, DANIEL; FERNANDEZ, MILLIE; FERRER, JOSEPH J; FERRER, MARY E; FETROW, DONALD R; FETROW, HELEN E (ESTATE); FETROW, MARILYN N; FETTERHOFF, KENNETH W; FETTRO, SANDRA L; FIELDS, MORRIS E (ESTATE); FINE, ALBERT; FINE, BETH A; FINK, DENNY (MINOR); FINK, JEFFREY (MINOR); FINK, JODY; FINK, LINDA L; FINK, MICHAEL; FINK, MICHAEL C JR (MINOR); FISHEL, ROY M; FISHEL, SUSAN M; FISHER, JANE L; FISHER, STEVEN B; FITTING, SUSAN M; FITZGERALD, C JAMES; FLANAGAN, KATHLEEN M (NISSLEY); FLEMING, CANDIS; FOOR, VIOLET (ESTATE); FORD, LOIS A (ESTATE); FORD, RUSSELL C; FOREMAN, DOLORES E; FOREMAN, LAURYN M (BESHARA); FOREMAN, RICHARD; FORNEY, ANNA E; FORNEY, J EDGAR; FORNEY, MICHELLE L; FORTNA, CHRISTOPHER M (MINOR)(ESTATE); FORTNA, DONALD R; FORTNA, LINDA E; FOSTER, FRANK T; FOSTER, MILDRED F; FOX, SHIRLEY A; FOY, CAROLE A; FOY, JOHN F JR (ESTATE); FRAZIER, GLENNA M (HYDE); FRAZIER, JOHN R; FRAZIER, PATRICIA V; FREY, CHARLES J; FREY, DEBRA M; FRICK, EDMOND F (MINOR)(ESTATE); FRICK, RICHARD F JR; FRICK, RIKKI J (MINOR)(ESTATE); FRIEDMAN, ANN L; FRIEDMAN, BENJAMIN; FRIEDMAN, I GEORGE (ESTATE); FRITZ, C DAVID; FRITZ, KAREN M; FRITZ, LINDA K; FRY, EMMA; FRY, LESTER D (ESTATE); FRYE, DOROTHY M; FRYE, RICHARD L; FULKERSON, ANNA M; FULTZ, CONNIE A; FULTZ, RUSSELL E; FURJANIC, CATHERINE E (ESTATE); FURJANIC, MICHAEL M; FURLOW, ELEANOR M; FURLOW, LYNN E; GALLAGHER, DAVID E; GALLAGHER, MARY A; GARMAN, BETTY T; GARMAN, FRANK JR; GARMAN, KARL R; GARMAN, MICHAEL R; GASKIN, ALBERT L; GASKIN, VIRGINIA M; GATES, CAROL; GATES, CLYDE; GAUGHAN, DOROTHY; GAUGHAN, HAROLD; GAUGHAN, JOSEPH (MINOR); GAW, HELEN J; GAW, KENNETH H; GAY, EDWARD F; GEESEY, CHARLES E; GEESEY, SCHARLEY A; GEORGE, BARBARA; GEORGE, HELEN S; GEORGE, RALPH W; GEORGE, WILSON; GIEHLER, ALFRED F; GIEHLER, JOANN C; GIFFORD, RAYANNE E; GILBERT, EDWARD

A; GINGRICH, ERIC S (MINOR)(ESTATE); GINGRICH, JO ANN A; GINGRICH, WILLIAM F; GIOVANIS, THEODORE (MINOR) (ESTATE); GLAD, LINDA I; GLAD, MARCO G JR; GLASER, KENNETH D; GLASER, ROSEMARY A L; GLASSMOYER, MARY L; GLASSMOYER, WALTER I JR (ESTATE); GOEPFERT, DAWN; GOLDSTEIN, ALAN; GOLDSTEIN, CAROLE S; GOLDSTEIN, DEENA (MINOR); GOLDSTEIN, DOROTHY K; GOLDSTEIN, EVELYN G (ESTATE); GOLDSTEIN, NASON; GOLDSTEIN, NATHAN; GOLES, MARY M; GONDEK, HELEN C; GONDEK, JOHN A (ESTATE); GONDEK, JOHN C; GONZALEZ, MELISSA A (MINOR); GONZALEZ, PEDRO T; GONZALEZ, SHARON R; GORDON, CONSTANCE D (ESTATE); GORDON, ELOISE; GORDON, WAYNE W; GOTTESMAN, LEON (ESTATE); GOTTESMAN, RITA; GRAD, ROBERT; GRANDON, BARBARA J; GRANT, MEYER A; GRANT, THELMA; GRAVES, ASHBY L; GRAVES, CHARLES E; GRAVES, CHARLES J K (MINOR); GRAVES, KELLY R B; GRAVES, MARY S; GREEN, DAVID A (MINOR); GREEN, DONALD E; GREEN, JOSEPH L; GREEN, MONIQUE R (MINOR); GREEN, NANCY L; GREEN, ROMAINE R; GREEN, SUSAN A; GREENAWALT, FRANK; GREENAWALT, MARY J (ESTATE); GRENOBLE, GARY W; GRIFF, CHARLES E; GRIM, DONNA Q (ESTATE); GRIM, JAMES H SR; GROSKY, FRANCES P; GROVE, JEFFREY L; GROVE, MATTHEW R (MINOR); GROVE, NED E; GROVE, RUTH M; GROVE, SYLVIA K (ESTATE); GRUMLEY, JAMES W JR (ESTATE); GRUNDEN, MILDRED A; GRUNDEN, ROBERT M (ESTATE); GUHL, DANIEL R; GUHL, ELMER R (ESTATE); GUISTWHITE, GLADYS (ESTATE); GUISTWHITE, LLOYD; GUMBY, JOHN W SR; GUMMO, CHARLES L (ESTATE); GUSTIN, ELIZABETH A; GUSTIN, RUDOLPH R (ESTATE); GUYER, ANNA; GUYER, CARL A (ESTATE); GUYER, JAMES J (ESTATE); GUYER, STELLA D; HACKER, DEBORAH A; HAHN, DIANA L; HAHN, NORMAN L; HAINES, JAMES S; HAINES, SYLVIA; HALBLEIB, DOROTHY L (ESTATE); HALBLEIB, WALTER; HALL, ALFRED T JR (ESTATE); HALL, BETTY E; HALL, GARY A; HALLOCK, MARGARET E; HALTERMAN, WANDA D; HAMMAKER, EARL L; HAMMAKER, ELEANOR K; HAMMER, GRACE D (ESTATE); HAMMOND, ANN L; HAMMOND, JAMES W; HANK, HAROLD C; HANK, HELEN M (ESTATE); HANSARD, EUNICE A; HAN-

SARD, ROY E; HANSON, DENISE (ESTATE); HANSON, ROBERT; HARPER, DONALD E; HARPER, SANDRA; HARRELL, ALVIN (ESTATE); HARRELL, ANNA M; HARRIS, THOMAS R; HARRISON, HOLLY; HASKINS, DONALD (ESTATE); HASKINS, GLORIA; HATTER, BETTY J; HAWKINS, CHERYL; HAYES, HEATHER L; HAYES, MARILYN S; HAYES, SCOTT R (MINOR); HAYES, VIRGINIA L; HAYES, WARREN W; HECKMAN, ALBERT L JR; HECKMAN, RYAN L (MINOR); HEDDINGER, FRED M; HEDDINGER, LILLIAN M; HEFFENTRAGER, ALLISON (MINOR); HEFFENTRAGER, CINDY; HEILIG, JUDY A; HEISEY, BERTHA R (ESTATE); HELMAN, EMMA M (ESTATE); HELMAN, PAUL C; HELWIG, EARL L; HELWIG, VIOLET M; HENNESSY, A SHELLY; HENNESSY, COLLIN (MINOR); HENNESSY, MARK C; HENNESSY, URSULA G; HERNJAK, GEORGE J; HERNJAK, MARY J; HERROLD, JESSICA M (MINOR); HERROLD, PATRICIA A; HERROLD, SCOTT E; HERTZOG, EDWARD J; HERTZOG, MARIE H; HESS, CHARLES J (ESTATE); HESS, KATHRYN; HEUER, GARY H; HEUER, GARY H JR (MINOR); HEUER, JUDITH M; HICKERNELL, KENNETH B; HICKERNELL, PEARL M; HICKMAN, FRANK D (ESTATE); HILEMAN, JAY T; HILEMAN, RUTH N; HILEMAN, TINA; HILL, BETTY J; HILL, DEREK L (MINOR); HILL, EDWARD T (ESTATE); HILL, EVELYN; HILL, HEATHER J (MINOR); HILL, JUNE A; HILL, KERN (ESTATE); HILL, LEE N; HILT, DANIEL R; HILT, ETHELDA V (ESTATE); HINDERMYER, DIANE; HINES, LEVERTA M; HINES, THOMAS E SR (ESTATE); HITZ, GEORGE V (ESTATE); HITZ, MARJORIE B; HOBAUGH, DEBBIE A; HOBAUGH, MATTHEW K (MINOR); HOBAUGH, ROBERT E; HOCH, CARYL C; HOCH, LOUIS A; HOCKER, CARL (ESTATE); HOCKER, JOHN D; HOCKER, NANCY A; HOFFMAN, ARLENE M; HOFFMAN, JAMES F; HOFFMAN, PHILLIP W; HOFFMASTER, MARILYN L (ESTATE); HOFFMASTER, S ROBERT; HOLMES, ROBERT P (ESTATE); HOLOWKA, ANNIE A; HOLOWKA, MARIE J (ESTATE); HOMMEL, HARRY S (ESTATE); HOOVER, HENRY H; HOUCK, HOWARD G JR; HOUCK, MARTHA E; HOUSER, GERTRUDE I; HOUSER, HERBERT H; HOUSER, KATHLEEN M; HOUSER, ROBERT A JR; HUFFMAN, TERRY L SR; HUGGINS, ANNA; HUGGINS, ANNEMARIE (MINOR); HUGGINS, CHRISMARIE (MINOR); HUGGINS, JAMES R JR (MINOR); HUGGINS,

JAMES R SR; HUGGINS, ROSEMARIE (MINOR); HUGGINS, RUDOLPH (MINOR); HUGHES, CHRISTY A (MINOR); HUGHES, FRANK S SR; HUGHES, L CATHERINE; HUMMERT, FRANK C SR (ESTATE); HUNT, ARTHUR L (ESTATE); HUNT, SYLVIA L; HUNTER, DAVID W; HUNTER, MADELINE J; HUNTZINGER, JODY E (MINOR); HUNTZINGER, JOSEPHINE L; HUNTZINGER, LARRY E; HUNTZINGER, ROBERT J; HUNTZINGER, SHARON L; HUSIC, DOROTHY E; HUSIC, JOSEPH S; HYDE, WILLIAM R; INTRIERI, CLARENCE J (ESTATE); INTRIERI, PEARL M; ISAAC, HELEN A; JACKSON, EDWARD P; JACKSON, LARRY E; JACKSON, LARRY E JR (MINOR); JACKSON, VIRGINIA (ESTATE); JACOBS, ELIZABETH; JAMES, AMOS; JAMES, KAMEELA A (MINOR)(ESTATE); JAMES, LINDA J; JAMES, RICHARD R (MINOR) (ESTATE); JAMES, RICHARD W; JARRETT, GREGORY A; JARRETT, KATHERINE J; JENSEN, CAROL F; JENSEN, EDWARD (ESTATE); JOHNSON, ARTHUR (ESTATE); JOHNSON, CLAUDETTE; JOHNSON, DONALD (MINOR); JOHNSON, HILDA C; JOHNSON, JOHN M; JOHNSON, KAREN E M; JOHNSON, RAELA; JOHNSON, SCOTT F (MINOR); JOHNSON, WILLARD D (ESTATE); JOHNSTON, JAMES F (ESTATE); JOHNSTON, JOAN B; JONES, CLARENCE L (ESTATE); JONES, ELAINE M; JONES, MAE I; JONES, WALLACE M (ESTATE); JORDAN, JESSIE I; JORDAN, RICHARD J; JUMPER, JACQUELINE L; JUMPER, ROBERT E; KABAKOW, EDITH; KALINA, JEANNE H; KALINA, JOSEPH E; KAMARER, RICHARD L; KAMARER, SHELBY; KAMARER, WILHELMINA M; KANTHATHAM, RUJIPORN (MINOR); KATZEN, HELEN N (ESTATE); KAYLOR, DALE R (ESTATE); KAYLOR, ROBERT T; KAYLOR, RUTH E; KEAMMERER, PATRICIA L; KEAMMERER, RICHARD L; KEAMMERER, SARA C (MINOR); KEATING, HAROLD; KEATING, PAULA; KEEFER, ANNA M; KEEFER, ROY M; KEEN, DENNIS A; KEEN, SUZANNE L; KEPP, GRACE; KEPP, RICHARD; KERNS, ANDREW M (ESTATE); KERNS, HOWARD P III; KERNS, NANCY A; KERSHNER, CAROL R; KERSHNER, RONALD C; KESSELRING, THOMAS L (ESTATE); KESSLER, DELORES M (ESTATE); KESSLER, HENRY C III; KICHMAN, CHARLES C NEESON; KICHMAN, JOAN ANEESON; KICHMAN, KANDICE M NEESON; KICHMAN, MATTHEW C NEESON; KIELY, DANIEL C (ESTATE); KIELY, LORETTA J; KIERNAN, JAMES P JR; KIER-

NAN, LOUISE M; KIICK, EDWARD SHEIN; KIICK, PERRI C SHEIN; KIMMEL, DEBRA A; KIMMEL, JEFFREY T (MINOR); KIMMEL, JOSEF H (MINOR); KIMMEL, JOSEPH H; KIMMEL, MICHELLE M; KINEYOUNG, RONALD; KING, LARRY J; KINSEY, DALE B; KINSEY, DOROTHY A (ESTATE); KIREN, FRANK M (ESTATE); KIREN, MARGARET L (ESTATE); KIRETA, ALAN; KIRKWOOD, DALE E; KIRKWOOD, DANIEL (MINOR) (ESTATE); KIRKWOOD, JOANN M; KIRSCH, DIANE E; KIRSCH, FRANCIS L; KITNER, DEREK J (MINOR); KITNER, VICKI C; KLEIMAN, LEAH; KLEIMAN, RAYMOND (ESTATE); KLEIN, JOEL S; KLEIN, JOSHUA (MINOR); KLEIN, MARILYN; KLEIN, SELMA R; KLINE, CHARLAINE H; KLINE, JILL K; KLINE, JODI K (MINOR); KLINE, MARTHA J; KLINE, ROBERT A; KLINE, ROBERT A JR; KLINETOB, DAVID F; KLINETOB, RUTH E (ESTATE); KLINGEL, RICHARD A; KLINGER, CATHERINE N; KLINGER, STEVEN R; KNOLL, JOSEPH K; KNOLL, JOSEPHINE (ESTATE); KOHR, MARY L (ESTATE); KOLARAC, CAROL B; KOLLER, ABIGAYLE A (MINOR); KOLLER, JOANN E; KOLLER, TERRY L; KOONS, DORENE L; KOONS, FLORENCE S; KOONS, LOUIS A (ESTATE); KOONS, LYLE M JR; KOONS, MARK C (MINOR); KOSER, IRA E SR; KOSER, RUTH F; KOSIBA, DRUSILLA L; KOSIBA, PETER A JR; KOSKO, BARBARA A; KOSKO, LISA A (MINOR); KOSKO, ROBERT G; KOSKO, ROBERT G JR (MINOR); KOSLOV, LISA C; KOSLOV, STEVEN A; KOSTELEC, JAMES J JR; KOSTELEC, LINDA L; KOSTELEC, MICHAEL J (MINOR)(ESTATE); KOSTENBAUDER, CALEB C (MINOR); KOSTENBAUDER, JULIE A; KOSTENBAUDER, LAMAR S; KOTT, AMY M (MINOR) (ESTATE); KOTT, CYNTHIA J; KOTT, KENNETH H; KRAFFT, MARGARET; KRASEVIC, GEORGE M; KRASEVIC, LOUISE A; KREISER, CHESTER; KREISER, MAE L; KREISER, MARTIN L; KREISER, SANDRA J; KREISER, SHEILA M (MINOR); KRELL, JOAN R; KRELL, STACI R; KROM, FRED JR; KROM, TERRY L; KRONE, STEPHEN R; KUHN, DENISE E; KUHN, EMORY L; KULBACKI, FELIX F (ESTATE); KULBACKI, G PATSY; LABOY, ANTONIA C (ESTATE); LABOY, MARTIN C; LACEY, MATTHEW W (ESTATE); LACEY, SCOTT S; LAMADE, CLAIRE W (ESTATE); LAMADE, JOHN W; LAMARCA, LEWIS M; LAMARCA, SANDRA L; LAMASON, CHARLES W; LAMASON, DARLENE D; LAM-

BERT, FAY I; LANDIS, LISA G; LANDIS, TIM C; LANSER, MARILYN J; LANTZ, JOHN Y (ESTATE); LANTZ, MARY N; LASTER, NANCEE E; LAUBACH, JENNIFER H (ESTATE); LAUDERMILCH, JANICE E; LAUDERMILCH, ROBERT L; LAUGHMAN, GALE E; LAUGHMAN, GLENN E; LAUGHMAN, GREGG A; LAUGHMAN, JANE E; LAUGHMAN, JUSTIN E (MINOR); LAUGHMAN, NELLIE E; LAUGHMAN, QUAY L; LAUGHMAN, RUTH A; LAUGHMAN, STACEY E (MINOR); LAWRENCE, DOROTHY C (ESTATE); LAWRENCE, FRANK H; LAYNE, DELMA E; LAYNE, FLORENCE S (ESTATE); LEADER, MAURICE (ESTATE); LEBO, DENNIS C; LEBO, JANICE A; LEE, ALICE E (ESTATE); LEE, JAMES E; LEE, JANE T; LEE, SHIRLANNE I; LEE, WILLIAM B (ESTATE); LEGGORE, ROSEMARY; LEHMER, HAROLD (ESTATE); LEHMER, JEAN M; LEHRMAN, CORY S (MINOR) (ESTATE); LEHRMAN, DAVID M; LEHRMAN, LYNN S; LEHRMAN, RYAN (MINOR); LEITER, JACK A; LEITER, WANDA M; LENGJEL, JUNE L; LENYO, CATHERINE S; LENYO, DANIEL (ESTATE); LEONARD, CARRIE R (ESTATE); LEONI, FRANK F (ESTATE); LEONI, ISOLINA G; LEONI, SPARTO L (ESTATE); LEVERENZ, BRANDEN (MINOR); LEVINE, IDA (ESTATE); LEVINE, REUBEN (ESTATE); LEWINTER, ANDREA; LEWINTER, MARK (MINOR); LEWIS, CHRISTOPHER C; LEWIS, JOHN; LEWIS, MARY; LEWIS, OZZIE L (ESTATE); LIDDICK, DOROTHY S; LIDDICK, HELEN J; LIGHTY, CHRISTOPHER (MINOR); LIGHTY, IRVINE D; LIGHTY, RUTH D; LIGHTY, TRACEY (MINOR); LIGHTY, WILLIAM (MINOR); LINDBERG, ERIKA J (MINOR); LINDBERG, KATHLEEN; LINDBERG, RONALD D (MINOR); LINDBERG, RONALD D (ESTATE); LINDENBERGER, CAROLE M; LINDENBERGER, PAUL N (ESTATE); LINGLE, FLORENCE R; LINGLE, KENNETH O (ESTATE); LINTA, CATHY; LIPIEC, JOSEPH (ESTATE); LIPIEC, RUTH; LIPSKY, BENJAMIN; LIPSKY, PEARL P; LITTLE, BETSY L; LITTLE, J MICHAEL; LITTLE, L SUSAN; LITTLE, VALERIE M (MINOR); LIVINGSTON, NAOMI S; LIVINGSTON, WILLIAM H; LLOYD, JAYNE C; LLOYD, LLEWELLYN; LOMMAN, DELORES R; LOMMAN, PAUL R; LORANZO, BABY (MINOR)(ESTATE); LORANZO, CAROLYN D; LORANZO, NICHOLAS; LOVE, ELDER A (ESTATE); LOVE, MARGARET E; LOWY, ALEX; LOWY, HENRIETTA (ESTATE); LUDWIG, NALDA; LUSTIG, JOHNATHAN M (MINOR); LUTZ,

JAMES E JR; LUTZ, MICHELE L; LYNCH, BECKY S (MINOR); LYONS, BARBARA J; LYONS, DELBERT; LYONS, JEFFREY D; LYONS, RUTH; MACHITA, HARRY J; MACHITA, SUZANNE; MACRI, CECILIA (ESTATE); MAGDULE, BEVERLY; MAGDULE, STUART J; MAGILL, BARBARA J; MAGLIN, DIANA B; MAGLIN, EDWARD R; MAHADY, DANIEL A (ESTATE); MAHADY, DORIS J; MAHONE, MICKEY D SR; MANFRED, ETHEL M; MANFRED, FRANK A (ESTATE); MANNING, JANE E; MANNING, NEAL W JR; MANS, MARGARET R; MANS, WALTER R; MANSBERGER, CHARLES K; MANSBERGER, PAULINE L; MARINARO, BETTY J; MARINARO, FRANK F; MARINELLO, STEPHEN A; MARKEY, KIMBERLY D; MARKEY, ROBIN E; MARKLEY, NANCY M; MARKS, DOROTHY L; MARKS, HAROLD E; MARTIGNETTI, LORRAINE; MARTIGNETTI, RONALD; MARTIGNETTI, SASHA NOEL; MARTIN, BABY (MINOR); MARTIN, CLAIR; MARTIN, DEBRA C; MARTIN, GREGG E; MARTIN, LEANNE; MARTIN, WANDA; MARTIN, WILMA O; MARTIN, WILLIAM L (ESTATE); MARTINI, DORA L; MASSARE, MARIE A; MATALONIS, FABIOLA T; MATALONIS, ROBERT L (ESTATE); MATHERS, DOROTHY M; MATHERS, RAYMOND (ESTATE); MATRICCINO, JOHN J; MATRICCINO, LINDA L; MAURER, NANCY M; MAXWELL, CHARLES J; MAXWELL, LOIS A; MAZURIK, JOSEPH J; MAZURIK, JULIA E (ESTATE); MAZZACCARO, MICHAEL A SR; MCARTHUR, MAMIE R; MCCANN, KENNETH C JR; MCCANN, M COLLEEN; MCCARTNEY, HELEN F; MCCARTNEY, ROBERT C SR; MCCREARY, DORIS N; MCCREARY, LESTER E SR (ESTATE); MCDADE, DOUGLAS A; MCDADE, KEITH (MINOR); MCDADE, MARLENE; MCDERMOTT, DONNA L; MCDERMOTT, HARRIET L (MINOR); MCDERMOTT, LARRY L; MCEACHERN, JAMES R; MCEACHERN, KATHLEEN C; MCELWAIN, DOROTHY; MCFANN, KATHRYN I; MCHUGH, CARL; MCHUGH, CAROL J (O'BRIAN); MCINNIS, MAXILEE; MCKEE, ARVILLA C (ESTATE); MCKEE, WILLIAM G; MCMURRAY, DOROTHY L; MCPHERSON, JILL B; MCPHERSON, RANDOLPH C; MCVEY, NANCY; MCVEY, THOMAS D (ESTATE); MEBUS, CHARLES F (ESTATE); MEDEIROS, ARTHUR R; MEDEIROS, MARY J (ESTATE); MEDELLIN, RAMONA R (MINOR); MEDELLIN, VIRGINIA L; MENDENHALL, PATRICIA D; MEREDITH, MYRTLE C;

MEREDITH, WILLIAM H; MESCALL, DANIEL (MINOR); MEYERS, ANDREW B (MINOR); MEYERS, ELLYN M; MEYERS, HARRY P; MEYERS, JOHNATHAN M (MINOR); MICKOLA, ANDREW M (ESTATE); MICKOLA, RITA M; MIDAS, KING F; MIDAS, STELLA E (ESTATE); MILKOVICH, JOHN J JR; MILKOVICH, THELMA D; MILLER, CECILIA P; MILLER, CHRISTOPHER L (MINOR); MILLER, CYNTHIA A; MILLER, DELORES J; MILLER, EARL E; MILLER, ELLEN M; MILLER, ERIN K (ESTATE); MILLER, GAYLE O; MILLER, H LIONEL (ESTATE); MILLER, HERBERT A (ESTATE); MILLER, IRVIN S (ESTATE); MILLER, IVAN M; MILLER, KATHRYN L; MILLER, MARY E; MILLER, MARY L; MILLER, MILDRED; MILLER, MYRTLE M; MILLER, PAUL L (ESTATE); MILLER, PAUL R (ESTATE); MILLER, PRESTON H; MILLER, RONALD E; MILLER, ROSEMARIE; MILLER, THOMAS; MILLER, THOMAS B (ESTATE); MILLER, TIMOTHY; MILLER, VIOLET E; MILLER, VIOLET W (ESTATE); MILLER, WILLIAM S (ESTATE); MILSPAW, ROSEMARY; MINNICH, HARRY G; MINNICH, MARION F; MINNS, IDA E; MINNS, WILLIAM E; MITCHELL, IRENE K; MITCHELL, JAMES H; MITCHELL, ROGER N (ESTATE); MOHAR, GIZELLA (ESTATE); MONTVILLE, DANIEL A (MINOR); MONTVILLE, HARRY; MONTVILLE, VIRGINIA; MORRISON, ERNEST E (ESTATE); MORROW, DALE W (ESTATE); MOSBY, ELIZABETH E; MOSBY, JAMES A; MOSS, JOAN A; MOSS, MARVIN D SR; MOSTELLER, ELEANOR; MOSTELLER, KARL E (ESTATE); MROCZKA, BARRY R; MROCZKA, MARY BETH; MUDRY, LEONARD J; MUDRY, MAUREEN E; MUDRY, TIMOTHY (MINOR); MULHOLLAND, BARBARA J; MULHOLLAND, JAMES J; MULHOLLAND, MICHAEL A (MINOR); MUMMA, BETTY A (ESTATE); MUMMA, KENNETH E; MUMMA, LEILANI A; MUMMERT, JOHN; MUMMERT, JOYCE; MUMMERT, NANCY L; MURLIN, ANTHONY L (ESTATE); MURLIN, MYRTLE E; MURPHY, JAMES J; MURPHY, JEREMY M (MINOR); MURPHY, JESSE G (MINOR); MURPHY, SHERRY D; MURRAY, BEVERLY A; MURRAY, GILBERT F; MURRAY, JOHN E SR; MURRAY, V MARLENE (ESTATE); MURREN, JEUNE M; MURREN, JOSEPH E; MUSSER, CHARLES E; MUSSER, JANET I; MUTH, AUDREY W; MUTH, RAYMOND F JR (ESTATE); NAGY, THELMA M; NAPILTONIA, ROBERT; NAPILTONIA, SHEILA J; NAPLES, JOSEPH M;

NAPLES, MARY L; NAPLES, PAMELA F; NAPLES, SAMUEL M (MINOR); NEIDERT, CATHERINE A; NEIDERT, HENRY JR (ESTATE); NEIDINGER, RICHARD D; NESBIT, JAMES B; NESBIT, SHEILA M (HARMON); NICHOLAS, NICK; NICHOLAS, SOPHIE; NISSLEY, DONNA M; NISSLEY, TIMOTHY M (MINOR) (ESTATE); NORDFORS, DANIEL E (MINOR) (ESTATE); NORDFORS, PATRICIA A; NORDFORS, WILLIAM E; O'DONNELL, WILLIAM L; O'NEILL, LAWRENCE T; O'NEILL, MARY K; OBERCASH, BARRY (ESTATE); OBERCASH, DONNA H; OBERCASH, PAULA C (MINOR); OHARA, JOHN F JR (MINOR); OHARA, JOHN F SR; OHARA, LOIS J; OROSS, CARL E; OROSS, ERIC E (MINOR); OROSS, JASON R (MINOR); OROSS, JENNIFER D (MINOR); OROSS, SANDRA J; ORT, MARIAN R (ESTATE); OSTROSKI, BERNARD J (ESTATE); OSTROSKI, THERESA C; OUELLETTE, FRANCES B; OUELLETTE, RALPH J; OUELLETTE, RONALD J; PACE, BETTY A; PACE, DAVID E; PACZKOWSKI, EMILY A (ESTATE); PALMERI, GUY S; PALMERI, IVA O; PANNEBAKER, BOYD A (ESTATE); PANNEBAKER, KATHRYN K; PARKER, JERRY L; PARRISH, BARBARA A; PARRISH, JAMES G; PARSON, JANICE A; PATRICK, CHRISTINE I; PATRICK, JAMES W (MINOR); PATRICK, JOHN D; PATTON, CATHERINE D; PATTON, ROBERT M; PAUP, AMY S (MINOR); PAUP, KEITH A; PAUP, RYAN K (MINOR); PAUP, SUSAN G; PAVLICK, DOROTHY J; PAVLICK, RUDOLPH R; PEARSON, GREGORY S (MINOR); PEARSON, MARCIE A (MINOR); PEARSON, NANCY A (ESTATE); PEARSON, STANLEY R JR; PECHART, DAVID Q; PECHART, DIANE K; PECHART, STEPHEN C (MINOR); PEFFLEY, LOIS J; PEFFLEY, WAYNE D; PEIFER, BETTY J; PEIFER, MARLIN J; PENN, LAVETTA D; PETERS, ANNA; PETERS, DARLA; PETERS, ESTHER M; PETERS, GEORGE I SR (ESTATE); PETERS, WILLIAM G SR; PETERSON, GLENN; PETERSON, JOLENE N; PETRINA, DENNIS D; PETRINA, NANCY S; PETRUCCI, HELEN M (ESTATE); PETRUCCI, JOHN P SR (ESTATE); PETTEY, BARBARA A; PETTEY, EDWARD B (ESTATE); PHILLIPS, ANNA V; PHILLIPS, BETTY S; PHILLIPS, JOHN W; PHILLIPS, LAWRENCE B; PICCIOTTI, LEONARD F; PICCIOTTI, VELIA O (ESTATE); PICKETT, BRENDA A; PIEPER, CAROL L; PIEPER, DOUGLAS; PIERCE, MARIA I; PINKO, MARLENE B; PINKO, MICHAEL F SR

(ESTATE); PIPHER, KENNETH A SR; PIPHER, MARGARET; PLACEY, ANN T; PLACEY, ANTHONY S (ESTATE); PLANK, CHRISTINE L (ESTATE); PLANK, SAMUEL E; PLAPPERT, KAREN A; PLAPPERT, MICHAEL L (MINOR); PLAPPERT, WILLIAM F SR; PLATKIN, LEONOR; PLATTNER, MILDRED B; PLATTNER, SAMUEL E; PLEASANT, GEORGE; PLUTA, ELIZABETH R; PLUTA, JOHN D (MINOR); POE, LOUIS R; POE, YVONNE W (ESTATE); POLLY, JEANETTE A; POLLY, JOHN M; POLSKY, ROBERT H; POPP, BEULAH N; POSEY, SYLVIA J; POTTEIGER, DANIEL P; POTTS, WILLIAM L JR; POWELL, LAMAR F; POWELL, MARJORIE J; PRATT, ROBERT A (ESTATE); PRICE, JAN E; PRICE, JANELLE L (MINOR); PRICE, JESSE A JR; PRIN, PATRICIA A; PRIN, WILLIAM A; PRINCE, ANGELA M; PRINCE, SARAH JO D (MINOR); PRISTELLO, GEORGEANN; PRISTELLO, JAIME L (MINOR); PRISTELLO, JAMES J; PROCOPIO, MAURICE P; PROCTOR, FANNIE M; PROCTOR, LAWRENCE H; PRONKO, MYRON; PROSPERI, JOAN A; PROSPERI, WILLIAM (ESTATE); PUGLIESE, CHARLES E (ESTATE); PUGLIESE, LISA D; PURCELL, FRANCES G; PURCELL, JOHN E; PUTT, KENNETH E; PUTT, RUTH C; QUANTE, LAURA E; QUANTE, ROBERT D; QUENZER, EDYTHE M; QUENZER, RICHARD C; QUIGLEY, ERIN L (MINOR); QUIGLEY, LAWRENCE D; QUIGLEY, MARY M; QUIGLEY, PHYLLIS J; QUIGLEY, TIMOTHY L; QUINN, CORNELIUS E; QUINN, SHEILA M; RACHELSON, HELEN H (ESTATE); RACHELSON, NORMAN; RAD, DELORES A; RAD, THOMAS; RADABAUGH, DONNA M; RADABAUGH, GEORGE W; RADLE, NANCY H; RADLE, WILLIAM D; RADOS, ANTHONY J (ESTATE); RADOS, MATTHEW R (MINOR); RADOS, ROBERT A; RADOS, RONALD R; RADOS, SUZANNE C; RAFY, JENNIFER A (MINOR); RAFY, ROBERT W; RAFY, SANDRA K; RAILING, DALE E (ESTATE); RAILING, HELEN M; RAMAGE, EARL M; RAMAGE, JOAN M; RAMBLER, DAVID E; RAMBLER, KAREN B; RAMOS, DEMETRIUS E (MINOR); RAMOS, NICHOLAS J (MINOR); RAMOS, ROSEMARY; RAYNOCK, MICHAEL P; RAZZIS, HERMAN A; RAZZIS, MARY L (ESTATE); REAMER, DOROTHY A; REAMER, WALTER H (ESTATE); REAP, ALBERT; REAP, ELEANOR; REDFERN, JANET J; REED, BLOSSOM B; REED, EDWARD G (ESTATE); REED, MARGARET S; REESE, SAMUEL L; REESE, SANDRA Y;

REESER, IRMA; REESER, VERDELL L; REESER, YVONNE C; REIGLE, BERNEICE; REIGLE, KENNETH A (ESTATE); REMSNYDER, FLORENCE E; REMSNYDER, ORIN F; RENSHAW, GINA; RENSHAW, JANE L; RENSHAW, W RICHARD; RESNICK, HYMAN; RESNICK, IDA; RESNICK, JOYCE K; RESNICK, MARVIN E; RETTINGER, JOHN E; RETTINGER, MIRIAM P; REYNOLDS, CHARLES H (ESTATE); REYNOLDS, MARY C; REYNOLDS, THOMAS E; RHOADS, KATHLENE A; RHOADS, RONALD E; RICHIE, DENNIS R; RICHIE, KATHLEEN L; RICKABAUGH, SHARON L; RICKER, DONNA R; RICKER, ROY L JR; RIDER, RAYMOND C; RIORDAN, FLORENCE C; RIORDAN, WILLIAM J; RITCHEY, CARL E (ESTATE); RITCHEY, ELIZABETH F (ESTATE); RITTER, EDWARD E SR; RITTER, SONDRA A; ROBERTS, CHARLES H; ROBERTS, JANE M; ROBINSON, IZOLA B; ROBINSON, JEANNE N; ROBINSON, LILLIAN L (ESTATE); ROBINSON, WILBUR F (ESTATE); ROBISON, LOUISE A; ROCHE, JOHN B III; ROCHE, NANCY E; ROCHMAN, HARRIET; ROCHMAN, HERBERT B; ROCKMORE, DAVID D (ESTATE); ROCKMORE, MARY E; ROGERS, AGNES M (ESTATE); ROGERS, PAUL P; ROLKO, ELIZABETH L; ROLKO, GEORGE P; ROMBERGER, GERALD R; RORAPAUGH, AMANDA C (MINOR); RORAPAUGH, DALE R; RORAPAUGH, DANIELA R; ROSE, BERNARD Z (ESTATE); ROSE, EDITH Z; ROSEMAN, LEONARD L (ESTATE); ROSEMAN, RUTH; ROSEN, CORAL F; ROSEN, RALPH; ROSEN, ZELLMAN (A/K/A GEORGE) (ESTATE); ROSI, DORIS E; ROSI, JOSEPH A; ROSS, VIRGINIA M; ROTH, EDWARD H JR (ESTATE); ROTH, JOHN; ROTH, LINDA; ROTH, SARAH M; ROTHBERG, ROSE (ESTATE); ROUNSLEY, MARY A (ESTATE); ROUNSLEY, MILLARD E; ROWE, BABY FETUS (ESTATE); ROWE, EVELYE A; ROWE, EVELYE N (MINOR) (ESTATE); ROWE, RANDALL A; ROZMAN, BETH L (MINOR); ROZMAN, FRANK E; ROZMAN, LUGENIA A; RUBIN, LEWIS; RUBIN, NANCY; RUDY, ELIZABETH R; RUDY, ISAAC C (MINOR)(ESTATE); RUDY, SUSAN L; RUTTER, DONNA M; RUTTER, GREGORY D; RYAN, ALDA R; RYAN, DONALD B (ESTATE); RYMER, CHRISTINA D (MINOR); RYMER, JOYCE M; RYMER, JUERGEN; RYMER, RICHARD E (MINOR); SAFRANEK, MARY M; SAJESKI, EMILY B (MINOR); SAJESKI, EUGENE A; SAJESKI, NANCY C; SALOV, KENNETH L;

SALOV, NANCY J; SANDEN, JEFFREY A; SANDEN, STEPHANIE A (ESTATE); SANTORO, JOHN T; SANTORO, MELISSA S (MINOR); SANTORO, SUSAN L; SARDA, SUBHASH C; SAUNDERS, RANDOLPH L; SAUNDERS, SHARON G; SAYTAR, CAROL A; SAYTAR, STEVE W; SCALI, SALVATORE; SCHAFFHAUSER, RUTH Y; SCHAFFNER, BARBARA A (ESTATE); SCHAFFNER, ROBERT L; SCHEIB, DERVIS E; SCHEIB, NANCY L; SCHELL, JAMES E; SCHELL, KIMBERLY A; SCHELL, MARILYN E; SCHOPPERT, KRISTEL S; SCHRADE, BARRY L; SCHRADE, JOYCE M; SCHRADE, TERRY L (MINOR); SCHROLL, HAROLD G (ESTATE); SCHROLL, HELEN L; SCHUCHMAN, BETH A; SCHUCHMAN, HAROLD G JR; SCHWARTZ, HARRY L; SCHWARTZ, JAN M; SCHWARTZ, PATRICIA H; SCZYPTA, DEBORAH J; SCZYPTA, RONALD J (MINOR); SEARER, DALE P JR; SEARER, JODY L (MINOR); SEARER, JOSI S (MINOR); SEARER, SUSAN M; SEDESHE, ANGELA; SEIGH, EVA C; SEIGH, KENNETH; SELKIRK, SYLVIA L; SELKIRK, WILLIAM E; SENNETT, FRANCES J (ESTATE); SENNETT, LESTER D; SHADE, ARTHUR P JR; SHADE, MARY A (ESTATE); SHAFFER, ALLAN L (ESTATE); SHAFFER, CAROL A; SHAFFER, CATHERINE J; SHAFFER, DARREL; SHAFFER, DONNA L (ESTATE); SHAFFER, FRANCIS M; SHAFFER, GERALD A; SHAFFER, JANET L; SHAFFER, JOHN T; SHAFFER, JOSEPH A; SHAFFER, MICHAEL; SHAFFER, RICHARD P; SHAFFER, THELMA M; SHANAMAN, ARLENE E (ESTATE); SHANAMAN, PAUL; SHANER, EUGENE R; SHANER, IDA H; SHANK, LAWRENCE W; SHANNON, NANCY L; SHAPIRO, GAYLE D; SHAPIRO, MARCIA P; SHAPIRO, MILTON; SHARAR, DORIS A; SHARAR, JAMES A; SHARE, LINDA D; SHEAFFER, ROXANNE L; SHEETZ, MARY A (BOYLAN); SHEETZ, MICHAEL R; SHEPLER, DEBRA W; SHEPP, JODY L; SHERMAN, SARAH; SHERMAN, SIDNEY; SHIELDS, LEE; SHIPE, CHARLES J (ESTATE); SHIPE, RUTH H; SHIRK, BRADLEY S (MINOR); SHIRK, JAMES P (MINOR); SHIRK, RAYMOND C; SHIRK, SUE A; SHOTZBERGER, WENDY; SHRIVER, E MAXINE (ESTATE); SHULLER, CECILIA E; SHULLER, DIANNA E; SHULLER, HARRY B (ESTATE); SHULTZ, HAROLD M; SHUMAKER, EVELYN E (ESTATE); SHUMAKER, RAYMOND W (ESTATE); SIMMONS, ELLA J (ESTATE); SIMMONS, STERL; SIMMONS, WHITNEY (MINOR); SIMONTON, RICHARD P; SIMON-

TON, THERESA M; SINE, DONNA J; SINE, WELBIE; SINGER, DAVID; SINGER, DIANE F; SINGER, EDWIN; SINGER, RENA K; SIPE, CARLA F; SIPE, JOSHUA A (MINOR)(ESTATE); SIPE, STEPHEN J; SIPLE, EVELYN M; SIPLING, DOROTHY N (ESTATE); SIPLING, HOWARD C; SITES, CRYSTAL K; SKASKO, JOSEPH C; SKUBECZ, RONALD H; SLEE, JAMES M; SLEE, JEROMY F (MINOR); SLESSER, EILEEN L; SMERICK, CHERYL L; SMITH, CATHERINE P; SMITH, CHARLES R JR (ESTATE); SMITH, CHRISTEN L (MINOR); SMITH, CORINNA A; SMITH, DEBORAH A; SMITH, DONALD L (ESTATE); SMITH, GLORIA A; SMITH, JEFFREY A; SMITH, JENNIFER M (MINOR); SMITH, JOAN L; SMITH, LINDA K; SMITH, LYDIA R; SMITH, MARY E; SMITH, MATTHEW J (MINOR); SMITH, MICHELLE SMAJDA; SMITH, RAYMOND B; SMITH, RICHARD L; SMITH, ROBERT K; SMITH, ROBERT L; SMITH, ROBERT M; SMITH, ROSS D; SMITH, SHARON A; SMITH, SHAWN (MINOR); SMITH, SHAWNEE D; SMITH, SHIRLEY E; SMITH, STEVEN L (MINOR); SMITH, TERRY; SMITH, WILLIAM R (MINOR); SNEED, ODIS D; SNEED, PEGGY J; SNOW, HARRY W; SNYDER, DONALD E; SNYDER, ESTHER M; SNYDER, KATHLEEN J (WISE); SNYDER, KENNETH R; SNYDER, PATRICIA A; SNYDER, RICKY L SR; SNYDER, SANDRA L; SOHN, HELEN J (ESTATE); SOLINSKI, RAYMOND R; SOLLENBERGER, RUBY B; SOLOMON, BETTY S; SOLOMON, EDWARD; SOMERVILLE, GEORGE H; SOMERVILLE, RUTH A (ESTATE); SONNI, SHARON; SONNI, THOMAS; SOTACK, MARIE A; SOTACK, THOMAS R; SOTO, DANIEL (MINOR); SOTO, ROBERTO (MINOR); SOUTHARD, EUGENE L; SOUTHARD, PATRICIA A; SOUTNER, JOHN P JR; SOUTNER, KELLY B; SPANITZ, MARY; SPANITZ, MICHAEL F; SPEESE, GAIL E; SPENCER, GRACE A; SPENCER, ROBERT H; SPIROFF, CHARLES V SR; SPIROFF, DAVID V; SPIROFF, JO ANN; SPIROFF, NATALIE; SPOLJARIC, MARGARET S; SPOLJARIC, WILLIAM J; SPONG, JACOB N; SPONG, PATTY A; SPOTTS, BARBARA; SPOTTS, HARRY H; SPROWLS, FRED J (ESTATE); SPRUCEBANK, THOMAS O; STAAB, GOLDIE L; STADIUM, PIA; STARE, JOYCE E; STARR, JAMES E; STARR, ROBIN K; STAUB, JO ANN; STAUFFER, RACHEL L; STAUFFER, ROBERT A; STAUFFER, TRACY M (MINOR); STAUFFER, VICTORIA; STEINRUCK, BETTY Y; STELTZER, CARL L (ESTATE); STELTZER,

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D.C. No. 88-CV-1551

AMISH HOMESTEAD, INC.; THE CHERRY LANE MOTOR INN CORP.; CONTINENTAL INNS OF AMERICA, INC., T/A CONTINENTAL INN; COSGROVE, JAMES, D/B/A REVERE TAVERN AND BEST WESTERN REVERE MOTOR INN; EARL REALTY, INC.; FAMILY STYLE RESTAURANT; GLASS KITCHENS OF LANCASTER, INC.; HOMESTEAD GIFT SHOP, INC.; HOST ENTERPRISES, INC.; NOAH N. MARTIN CO.; ONE ROOM SCHOOLHOUSE, INC.; PENTIDATILLO CORP., D/B/A ITALIAN VILLA EAST; RUTT, RICHARD M., D/B/A RUTT'S TOURS; SKIADAS, TRIFON N., NANDAS N. SKIADAS, GEORGE N. SKIADAS, PETER N. SKIADAS AND HARRY KEARES, T/A SKIADAS BROS. ENTERPRISES; THOMAS E. STRAUSS, INC.; TWO TWENTY-TWO CORPORATION; GETTYSBURG TOURS, INC.; HERITAGE INNS, INC.; L. E. SMITH WHOLESALE DISTRIBUTORS, INC.; LINCOLN HERITAGE, INC.; OTTENSTEIN, THOMAS R., WALTER MCMANUS, JR., AND TAURUS INVESTMENTS, INC., TRADING AS OVERVIEW LIMITED PARTNERSHIP; SMG INVESTMENTS, INC.

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ROGERS, HYLAND; ROGERS, JAMES W (ESTATE)

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No. 95-1315

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1995

GENERAL PUBLIC UTILITIES CORP., METROPOLITAN EDISON CO., JERSEY CENTRAL POWER & LIGHT CO., PENNSYLVANIA ELECTRIC CO., BABCOCK & WILCOX CO., MCDERMOTT INCORPORATED, RAYTHEON CONSTRUCTORS, INC., BURNS & ROE ENTERPRISES, INC., DRESSER INDUSTRIES, INC.,

Petitioners,

VS.

JONATHAN W. DODSON, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

APPLICATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS

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APPLICATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Nuclear Energy Institute, Inc., the Edison Electric Institute, the American Public Power Association, the National Rural Electric Cooperative Association, Arizona Public Service, Carolina Power & Light Co., Commonwealth

Edison, Consolidated Edison Co. of New York Inc., Detroit Edison, Duke Power Company, Duquesne Light Company, Entergy Operations, Inc., Florida Power & Light Company, Southern California Edison Co., Southern Nuclear Operating Company, Texas Utilities Electric Company, Inc., and Wisconsin Public Service (collectively amici or the amicus organizations) respectfully move for leave to file the attached brief *amicus curiae*. The consent of the attorneys for the petitioners has been obtained. The consent of the attorneys for the respondents was requested but refused.

As set forth more fully in the attached brief, amici have a pronounced interest in the sole question raised by the petition; namely, whether punitive damages that are intended solely to punish and deter (such as those authorized under Pennsylvania law) can be awarded in a tort case arising under and governed by the Price-Anderson Act (42 U.S.C. § 2210 *et seq.*). First, under the Third Circuit's construction of the liability shifting and cost spreading provisions of the Price-Anderson Act, many of the amicus organizations and their members potentially would be obligated to pay some or all of any punitive damages ultimately awarded in these consolidated actions.

Second, many of the amicus organizations or their members are themselves subject to claims for punitive damages in other lawsuits arising under and governed by the Price-Anderson Act, and/or potentially would be obligated to pay some or all of any punitive damages actually awarded in these other suits. Both the analytical framework used, and the resolution reached with respect to the punitive damages issue in the instant consolidated actions, will directly affect the resolution of the punitive damages issue in these other suits.

Finally, the punitive damages issue raises significant questions of federal law and national policy regarding the continued development and use of nuclear power, and the amicus

organizations believe the attached brief *amicus curiae* helps to demonstrate the importance of the issue and the need for this Court's intervention.

For these reasons, the amicus organizations request that the attached brief *amicus curiae* be accepted for filing.

DATED: March 21, 1996.

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BRIEF AMICUS CURIAE

I. STATEMENT OF INTEREST

A. Identification Of Amicus Organizations

Amici are comprised of the owners and operators of commercial nuclear electric utilities, organizations representing the owners and operators of all of the more than 70 nuclear power plants currently licensed to operate within the United States, and many of the utilities that purchase electricity generated by these power plants.

The Nuclear Energy Institute, Inc. (NEI) is the organization of the nuclear electric industry responsible for coordinating the combined efforts of all utilities licensed by the U.S. Nuclear Regulatory Commission (NRC) to construct or operate commercial nuclear power plants, and of other members of the nuclear industry, inter alia, in all matters involving generic regulatory policy issues and regulatory aspects of generic operational and technical issues affecting the nuclear energy industry. Every utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NEI. In addition, NEI's members include major architect/engineering firms, all of the major nuclear steam supply system vendors, and many other NRC licensees.

Edison Electric Institute (EEI) is the association of the United States investor-owned utilities and industry affiliates worldwide. EEI's U.S. members serve 99 percent of all customers served by the investor-owned segment of the industry. They generate approximately 79 percent of all the electricity produced by electric utilities in the country and service 76 percent of all ultimate customers in the nation. Approximately 26 percent of the electricity generated by investor-owned utilities in the United States was fueled by nuclear power in 1994.

The American Public Power Association (APPA) is a national service organization representing municipal and other state or local government-owned electric utilities throughout the United States. APPA member utilities serve some of the nation's largest cities, such as Los Angeles, Sacramento, Seattle, Phoenix, Jacksonville, Austin, San Antonio, Nashville, Memphis, Cleveland, Omaha and Orlando. Several state public power agencies, such as the New York Power Authority, South Carolina Public Service Authority (Santee Cooper) and Lower Colorado River Authority in Texas, provide electric power to many communities within their states. In addition, APPA members include joint action power supply agencies and public power distributors. More than 2,000 public power utilities provide 14 percent of all kWh sales to ultimate customers in the United States. Approximately 1,870 (93%) of these utilities are municipally owned.

The National Rural Electric Cooperative Association is the national service organization representing nearly 1,000 nonprofit consumer-owned rural electric cooperatives providing electric power supply to about 30 million people in 46 states. Many of these cooperatives are co-owners of nuclear power plants or purchase electricity generated by such plants.

The following utilities that own or operate nuclear power plants individually join as amici because of their direct interest in the issue presented by the petition for certiorari: Arizona Public Service; Carolina Power & Light Co.; Commonwealth Edison; Consolidated Edison Co. of New York Inc.; Detroit Edison; Duke Power Company; Duquesne Light Company; Entergy Operations, Inc.: Florida Power & Light Company; Southern California Edison Co.; Southern Nuclear Operating Company; Texas Utilities Electric Company, Inc.; and Wisconsin Public Service. Together these utilities represent the ownership of approximately one-half

of all commercial reactors licensed to operate in the United States.

B. Interest In Pending Petition For Certiorari

The Price-Anderson Act creates an exclusive funding mechanism to pay any and all liability for injury arising out of exposure to radiation from the operation of private commercial nuclear power plants, and caps all such liability for a single nuclear incident at the amount of funds available through this mechanism. *See Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 64-67 (1978). At the time of the Three Mile Island ("TMI") incident, this financial protection system consisted of a $140 million primary layer of private commercial insurance, a $335 million secondary layer that is funded as needed by all then-existing commercial nuclear power plant licensees on a pro-rata basis per reactor (not to exceed $5 million per reactor per incident), and an $85 million tertiary layer funded as needed by the federal government. Today, due to the 1988 Amendments Act and the NRC implementing regulations, this funding mechanism essentially consists of a $200 million primary layer of private commercial insurance, and a secondary layer in excess of $8 billion that is funded as needed by all commercial nuclear power plant licensees on a pro-rata basis per reactor (not to exceed approximately $79 million per reactor per incident). *See* 42 U.S.C. §§ 2210(b), (o)(1)(E); 10 C.F.R. § 140.11(a)(4).

Amici have a direct pecuniary interest in the resolution of the issue presented by the petition for a writ of certiorari. The individual utility amici — together with various members of the other amicus organizations — are the licensees obligated under the Price-Anderson Act to fund the $335 million secondary layer applicable to the claims arising out of the TMI incident. Hence, although not parties to this action, the decision of the Third Circuit to permit punitive

damages claims to proceed could lead to these amici paying in large part any punitive damages award subsequently entered in the pending actions. *See In re TMI Litig. Cases*, 67 F.3d 1119, 1127 (3d Cir. 1995) (hereafter *In re TMI III*), *petition for cert. pending*, No. 95-1315. Amici thus have a much more direct and compelling interest in the outcome of the presently pending petition for certiorari than typical amici have in issues before this Court.

Moreover, the individual utility amici — together with various members of the other amicus organizations — are defendants and potential defendants in other Price-Anderson actions in which punitive damages are or will be sought, as well as the licensees obligated to fund the multi-million or multi-billion dollar secondary layers of financial protection applicable to those actions. Moreover, additional Price-Anderson suits seeking punitive damages are certain to surface in the future — no matter how safely the nuclear plants are operated — given that (1) nuclear power plants have collectively employed hundreds of thousands of workers, while millions of people live in the areas near the plants, (2) it is likely that at least 30 percent of these individuals — just as at least 30 percent of all Americans no matter where they work and live — will suffer from cancer in their lifetime, see American Cancer Society, *Cancer Facts and Figures — 1996* at 1 (1996), and (3) significant segments of the media and the public have a fear of the risks posed by commercial nuclear power operations that is not consistent with the scientific evidence. *See* "LIVING SCARED: Why Do The Media Make Life Seem So Risky," 1994 WL 2344604 (L.A. Times 9/13/94); *see also id.*, 1994 WL 2344553. Thus, the amicus organizations or their members also have a vested interest in this Court correcting the improper analysis employed by the Third Circuit before it is relied upon by other courts called upon to determine whether punitive damages of the type authorized by their

forum state are available in an action arising out of and governed by the Price-Anderson Act.

Because amici believe that the Third Circuit's decision is erroneous both in methodology and result, and in order to ensure that comprehensive national policies are consistently respected and to realize the national uniformity that is a goal of the Atomic Energy Act, amici urge this Court to grant the pending petition for certiorari.

II. ARGUMENT

A. The Court Of Appeals Improperly Abdicated Its Statutorily Mandated Responsibility To Determine Whether Punitive Damages Of The Type Authorized Under Pennsylvania Law Are Consistent With The Price-Anderson Financial Protection System

Although the Price-Anderson Act created a federally mandated pool of funds to compensate persons injured in a nuclear incident, as originally enacted it left it up to state tort law to provide the means by which the injured parties could establish a right to payment from those funds. *See Silkwood v. Kerr-McGee*, 464 U.S. 238, 251-53 (1984). Through the 1988 Amendments Act, however, Congress eliminated this direct reliance on state tort law. Instead, Congress created a new federal cause of action for "public liability" to serve as the sole vehicle for obtaining access to the financial protection system's funds. *See In Re TMI Litig. Cases Consol. II*, 940 F.2d 832, 854 (3rd Cir. 1991) (hereafter *In Re TMI II*), *cert. denied sub nom. Gumby v. General Public Utilities Corp.*, 503 U.S. 906 (1992).

As is often the case, Congress neither specified all the elements of this new federal cause of action, nor directed the wholesale adoption of state tort law causes of action as federal law. Rather, Congress expressly commanded that "the substantive rules for decision in such action shall be

derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of [the Price-Anderson Act]." 42 U.S.C. § 2014(hh). Therefore, before applying state law, courts in "public liability" actions first must determine whether that state law is consistent with the Price-Anderson Act. Indeed, when first considering the 1988 Amendments Act during an earlier appeal in this same Three Mile Island Litigation, the Third Circuit itself recognized that "in every case alleging public liability, courts will be required to determine whether state law principles conflict with other parts of the Price-Anderson scheme." *In Re TMI II, supra*, 940 F.2d at 858; *accord O'Conner v. Commonwealth Edison Co.*, 13 F.3d 1090, 1100-01 (7th Cir. 1994) ("As the Third Circuit noted in *TMI*, the Amendments Act places great weight on the necessity of the district court's determining whether state and federal law are consistent.").

Nevertheless, when faced with the question of whether punitive damages of the type authorized under Pennsylvania law are available in these consolidated actions, the Court of Appeals essentially concluded that there was no need to perform the very consistency analysis it previously stated was "in every case . . . required." Rather, the Court of Appeals concluded that both Congress in the 1988 Amendments Act itself, and this Court in *Silkwood v. Kerr-McGee Corp.*, had already determined that all punitive damages are consistent with the Price-Anderson scheme. *In Re TMI, supra*, 67 F.3d at 1124-25. As explained below, this conclusion was clear error.

1. Congress Has Made No Blanket Determination Regarding The Consistency Of The Price-Anderson Scheme With The Various Types Of "Punitive Damages" Potentially Available Under The Tort Law Of The Fifty States

In the decision below, the Third Circuit laid great emphasis on the fact that the 1988 Amendments Act contains an express provision prospectively eliminating punitive damages from cases involving persons (principally Department of Energy Contractors) for whom the federal government provides indemnity against liability. 42 U.S.C. § 2210(s). According to the panel, the failure of Congress to eliminate punitive damages altogether clearly evidences a Congressional determination that *no* type of punitive damages is inconsistent with *any* other aspect of the Price-Anderson scheme. *In Re TMI, supra*, 67 F.3d at 1124-25. The panel is mistaken.

The adoption of section 2210(s) itself sheds no light on the views of Congress regarding the consistency between any type of punitive damages and the Price-Anderson financial protection system. Section 2210(s) is no more and no less than an effort by Congress to ensure that the Price-Anderson Act's federal indemnification provisions did not anomalously waive federal sovereign immunity from punitive damages, contrary to long standing federal policy as articulated most clearly in the Federal Tort Claims Act. Indeed, the legislative history subsequently highlighted in the Third Circuit panel's opinion expressly states as much. *In Re TMI, supra*, 67 F.3d at 1126 (*quoting* S. Rep. No. 70, 100th Cong., 1st Sess. 27 (June 12, 1987), *reprinted in* 1988 U.S.C.C.A.N. 1424, 1440); *accord* S. Rep. No. 218, 100th Cong. 2d Sess. 12-13, *reprinted in* 1988 U.S.C.C.A.N. 1476, 1487-88; H. Rep. No. 99-636 Part 2, 99th Cong., 2d Sess. 12-13 (August 5, 1986). Section 2210(s) has absolutely

nothing to do with the policies underlying the Price-Anderson Act itself.

Nor did the failure of Congress to adopt a similar express prohibition of all punitive damages awards against commercial power plant licensees necessarily evidence — as the Third Circuit panel contended — that Congress determined all such damages are consistent with the Price-Anderson scheme. Rather, a more plausible explanation is that Congress — aware that remedies with at least partially compensatory purposes are included among the various types of "punitive damages" available under the laws of the fifty states[1] — simply declined to adopt any blanket approach and instead left it to the courts to evaluate consistency on a case-by-case basis. Indeed, this view is supported by the fact that the Congressional Committee that originally drafted the language now found in section 2210(s), *see* H. Rep. No. 99-636 Part 2, 99th Cong., 2d Sess. 12-13, 39 (August 5, 1986) (proposing as an amendment to then-existing bill the language now found in 42 U.S.C. § 2210(s)), appeared expressly to contemplate that "punitive damages" could include an element of compensation. *See* H. Rep. No. 99-636 Part 2, 99th Cong., 2d Sess. 16 (August 5, 1986) ("It is an irony of the law that 'exemplary' or 'punitive' damages

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[1] See, e.g., *Hofer v. Lavender*, 679 S.W.2d 470, 474-75 (1984) ("punitive damages" survive against estate of deceased tortfeasor because, among other reasons, they are intended in part to compensate the victim); *Perry v. Melton*, 171 W. Va. 397, 401 (1982) (same); *Kewin v. Massachusetts Mut. Life Ins. Co.*, 409 Mich. 401, 419 (1980) ("exemplary damages" are intended to compensate for "humiliation, sense of outrage and indignity"); *Kelsey v. Connecticut State Employee's Assn.*, 179 Conn. 606,615 (1980) ("punitive damages" are to compensate for legal fees and expenses); *Cox v. Stolworthy*, 94 Idaho 683, 691 (1972), overruled in part on other grounds 104 Idaho 897 (1983) (one of three categories of "punitive damages" awards is measured by "the added expense to which the plaintiffs were put but for which they were not reimbursed by the jury's award of compensatory damages").

are not awarded to punish the defendant but are awarded 'in the view of supposed *aggravation of the injury to the feelings of the plaintiff* by the wanton or reckless act of defendant.' ") (emphasis added); *see also id.* at 17 (comparing punitive damages to other types of "less tangible" damages such as pain and suffering, and loss of consortium). Because any quasi-compensatory type of "punitive damages" — as opposed to a punitive-only type of "punitive damages" — might be consistent with the general compensatory purposes and structures of the Price-Anderson Act, a more rational reading of the legislative history is that Congress concluded that a blanket prohibition was not warranted and that a case-by-case consistency determination by the courts makes more sense.

In sum, the Third Circuit erred when it ignored the express declaration of the Senate Committee responsible for the final bill containing section 2210(s) that it "intends no preference for or against the awarding of punitive damages in suits against [commercial licensees] be inferred from the inclusion of [section 2210(s)] in the bill." S. Rep. No. 70, 100th Cong., 1st Sess. 27 (June 12, 1987), *reprinted in* 1988 U.S.C.C.A.N. 1424, 1440. While Congress did conclude that the federal government as sovereign should never have to make payment for any type of "punitive damages" liability, and so enacted section 2210(s), Congress also expressly left it up to the courts to evaluate the consistency of each specific type of "punitive damages" with the various policies embodied in the Price-Anderson scheme.

2. This Court Did Not Determine In *Silkwood* Whether Or Not Any Type Of Punitive Damages Is Consistent With The Price-Anderson Financial Protection System

The Third Circuit panel also appears to have concluded — as did the District Court whose decision was

under interlocutory review — that the issue of consistency between punitive damages and the Price-Anderson financial protection system already was resolved by this Court in *Silkwood v. Kerr-McGee Corp. See In Re TMI III, supra*, 67 F.3d at 1122, 1124-25. In *Silkwood*, a pre-Amendments Act case involving a plutonium processing company *not* subject to the Price-Anderson Act, *see Silkwood, supra*, 454 U.S. at 251 & n.12, this Court determined by a five to four vote that the Atomic Energy Act did not preempt in radiation injury cases an Oklahoma statute authorizing punitive damages as part of its tort law. In particular, this Court rejected the argument that Oklahoma's statute was preempted because Congress had occupied the field of nuclear safety regulation. This Court reasoned that Congress could not have intended its occupation of the field of nuclear safety regulation to have this effect because the legislative history of the Price-Anderson Act (although not directly applicable) proves that Congress assumed "state-law remedies, in whatever form they might take, were available to those injured by nuclear incidents." *Id.* at 256. This Court also rejected the argument that an award of punitive damages under Oklahoma law would conflict with the NRC's regulatory role or would frustrate the Congressional goal of promoting the peaceful use of atomic energy. *Id.* at 257-58.

The Third Circuit's conclusion that *Silkwood* disposes of the consistency issue raised below is erroneous for two principal reasons. First, *Silkwood* did not address or decide — either directly or indirectly — the issue of whether an award of punitive damages is consistent with the Price-Anderson financial protection system. Given that the defendant in *Silkwood* was not covered by that system, it is obvious why this Court did not address that point and that the issue of the consistency between an award of punitive damages and the federally mandated liability-shifting and spreading scheme was left to another day.

Nor did this Court even indirectly address this issue. While this Court did conclude that the then-existing legislative history of the Price-Anderson Act revealed a Congressional assumption that "state-law remedies, in whatever form they might take, were available to those injured by nuclear incidents," *id.* at 256, this Court also expressly stated that this did not mean that punitive damages for radiation injuries *never* could conflict with federal law:

> *We do not suggest that there could never be an instance in which the federal law would pre-empt the recovery of damages based on state law.* But insofar as damages for radiation injuries are concerned, preemption should not be judged on the basis that the Federal Government has so completely occupied the field of safety that state remedies are foreclosed *but on whether there is an irreconcilable conflict between the federal and state standards or whether the imposition of a state standard in a damages action would frustrate the objectives of the federal law.*

Id. at 256 (emphasis added). Although this Court "perceive[d] no such conflict or frustration *in the circumstances of this case," id.* (emphasis added), the inapplicability of the Price-Anderson Act to the defendant in *Silkwood* means that those "circumstances" by definition did not include the shifting and spreading of punitive damages liability through the Act's financial protection system. Therefore, nothing in *Silkwood* even indirectly addresses the issue of whether any type of punitive damages liability is consistent with the financial protection system, the issue squarely before the Court in this case.

Second, the Third Circuit's reliance on *Silkwood* also is misplaced because the issue of whether to permit punitive damages in that case was decided against an entirely different legal background than that of the presently pending petition. *Silkwood* involved the issue of whether federal law

preempted independent state law operating of its own force, and was decided against the backdrop of a perceived Congressional assumption that state tort remedies shall operate "in whatever form they might take." Thus, although this Court recognized a certain "tension" between exclusive federal regulation of nuclear safety and the state law punitive damages remedy, both federalism concerns and concerns over proper judicial deference to Congress combined in *Silkwood* to lead a bare majority of this Court to find no preemption. *See id.* at 256-57; *see also id.* at 248 (review important because issue "affects . . . the States' traditional authority to provide tort remedies to their citizens").

By virtue of the 1988 Amendments Act, however, Congress chose to federalize the entire area of radiation injury law, *see In Re TMI II, supra*, 940 F.2d at 854-55; *accord O'Conner, supra*, 13 F.3d at 1099-1100, and *expressly directed* that state-law remedies be borrowed as federal law *only* to the extent they are not inconsistent with the Price-Anderson Act. In other words, neither *Silkwood*'s federalism-based reluctance to displace independently operating state law, nor *Silkwood*'s reluctance to overturn the then-existing Congressional determination to utilize state tort remedies "in whatever form they might take," has any application to the present actions.

The standard of "inconsistency" that must be applied in these consolidated actions therefore is different from and not as stringent as *Silkwood*'s requirement of irreconcilable conflict or frustration of purpose in order to find preemption. As the Seventh Circuit has observed, "the Amendments Act makes pointedly clear that any tension between federal standards and state liability standards . . . is to be resolved so as to avoid inconsistency with the Price-Anderson Act." *O'Conner, supra*, 13 F.3d at 1105 n.13. The Third Circuit thus erred in failing to undertake this new analysis.

B. Punitive Damages Designed Solely To Punish And Deter, Such As Those Authorized Under Pennsylvania Law, Are Not Consistent With The Price-Anderson Scheme

Given that the Third Circuit improperly abdicated its responsibility to carefully weigh the consistency of the punitive damages remedy afforded by Pennsylvania law and the Price-Anderson scheme, it never fully addressed the clear incongruities created by permitting such a remedy in these consolidated actions. The petition for certiorari already details many of these incongruities, *see* Petition for Certiorari at 15-26, and amici will not repeat those points here.

C. A Failure Of This Court To Grant Review At This Time Will Impose Needless Cost And Uncertainty Upon The Entire Nuclear Industry In Contravention Of The Purposes Behind The Price-Anderson Act

Amici believe that there is a great need for immediate intervention by this Court to correct the Third Circuit's erroneous analysis and decision. Amici recognize that no punitive damages have yet been awarded in the pending consolidated actions. However, as explained in part I.B above, several of the individual utility amici currently are defending against punitive damages claims in other cases alleging injuries caused by radiation exposure arising under and governed by the Price-Anderson Act, and more such cases certainly can be expected. Absent the claims for punitive damages, conduct evidence would be largely irrelevant in these cases because a licensee's duty of care principally is defined in terms of compliance with the numerical permissible radiation dose limits established by the NRC, rather than in terms of "reasonableness". *See, e.g., In re TMI Litig. Cases*, 67 F.3d 1103, 1113-15 (3d Cir. 1995), *cert. denied*, ____ U.S. ____ (1996). However, if punitive

damages claims are permitted, millions of additional dollars necessarily must be spent on marshalling the documentary, percipient witness and expert witness evidence regarding licensee conduct — dollars that would come out of the limited Price-Anderson Act funds. 42 U.S.C. § 2014(k). A decision by this Court correcting the Third Circuit's faulty analysis and conclusion could eliminate this pointless effort, at least in cases brought in States with punitive-only type "punitive damages" like those authorized by Pennsylvania law.

III. CONCLUSION

For all the reasons set forth above, amici respectfully request that this Court grant the pending petition for certiorari.

DATED: March 21, 1996.

Respectfully submitted,

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No. 95-1315

(3)

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1995

GENERAL PUBLIC UTILITIES CORP.,
METROPOLITAN EDISON CO.,
JERSEY CENTRAL POWER & LIGHT CO.,
PENNSYLVANIA ELECTRIC CO.,
BABCOCK & WILCOX CO.,
McDERMOTT INCORPORATED,
RAYTHEON CONSTRUCTORS, INC.,
BURNS & ROE ENTERPRISES, INC.,
DRESSER INDUSTRIES, INC.,

Petitioners,

v.

JONATHAN W. DODSON, *et al.*,

Respondents.

On Petition for a
Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION

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Dated: March 21, 1996

16 pp

QUESTION PRESENTED

Despite the clear meaning of the Price-Anderson Amendments Act of 1988, 42 U.S.C. §2210 et seq., the act's legislative history, and this Court's ruling in *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984), all of which permit punitive damages for the claims at issue here, should the statute be judicially amended to subvert the policy of Congress?

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION

STATEMENT OF THE CASE

These actions were begun in the aftermath of the Three Mile Island nuclear facility ("TMI") accident of March 28, 1979.

In these actions Plaintiffs seek punitive damages given Defendants' willful, wanton and reckless indifference to the fact that General Public Utilities Corporation ("GPU") was aware of faulty plant equipment design for significant periods of time prior to the accident and did not take proper steps to alleviate or mitigate the effects of the equipment on the operation of the plant; falsified leak rate tests and reports submitted to the NRC; pleaded no contest to criminally falsifying such data in *United States v. Metropolitan Edison Co.*, CR-83-00188 (M.D.Pa.); and knowingly operated the plant in violation of technical specifications. Following the accident, GPU made numerous false statements denying releases of radiation when the releases were occurring. Such callous behavior, Plaintiffs contend will subject these Defendants to punitive damages.

During the early history of these cases, this Court decided *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984). Plaintiffs recognized that *Silkwood* lent overwhelming authority to Plaintiffs' position that punitive damages were available under the Price-Anderson Act. On February 12, 1985, following motions practice on that issue, the district court held that punitive damages would be recoverable under the Price-Anderson Act to the extent that they would not be paid from federal monies and denied Defendants' motion for partial summary judgment. The district court's order was amended on February 27, 1985 and published as *In re Three Mile Island Litigation*, 605 F.Supp. 778 (M.D.Pa. 1985).

Shortly after the district court's ruling, the Defendants petitioned the Court of Appeals for the Third Circuit for an interlocutory review of the district court's February 27, 1985 Order. In *Kiick v. Metropolitan Edison Co.*, 784 F.2d 490 (3d Cir. 1986), the court of appeals vacated the district court's order finding a lack of federal jurisdiction. Because the Price-Anderson Act provided no basis for federal jurisdiction, the district court remanded the actions back to state court.

The Defendants then lobbied Congress to retroactively create federal jurisdiction. Their accomplishment is embodied

in the Price-Anderson Amendments Act of 1988. 42 U.S.C. §§2014(hh), 2210(n)(2) [hereafter "the Amendments Act"], which became effective on August 20, 1988. Under the Amendments Act, Congress created a federal cause of action: the public liability action, 42 U.S.C. §2014(hh). Defendants were thus entitled to a federal forum and removed these actions to the district court.

Plaintiffs moved to remand the cases for lack of Article III jurisdiction. The district court agreed that Congress failed to confer federal jurisdiction by means of the Amendments Act. *See In re TMI Coordinated Proceedings*, 735 F.Supp. 640 (M.D.Pa. 1990). Defendants appealed the district court's remand order. The court of appeals reversed finding that the Amendments Act was constitutionally sufficient. *See In re TMI Litigation Cases Consolidated II*, 940 F.2d 832, 861 (3d Cir. 1991). This Court declined review of that opinion in *Gumby v. General Public Utilities Corp.*, 503 U.S. 906 (1992).

However, the Defendants' lobbying efforts were not fully accomplished (at least from their perspective) with respect to punitive damages. They did not alter the law of *Silkwood*. While retroactively conferring "arising under" jurisdiction by way of public liability actions over these cases, the Amendments Act was temporally limited, which limitation failed to limit the availablility of punitive damages for these actions.

In fact, the Amendments Act made explicit the availability of punitive damages to these actions, as well as other public liability actions related to nuclear incidents occurring on or after August 20, 1988. *Compare* 42 U.S.C. §2210(s)[1] *with* Note

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[1] 42 U.S.C. §2210(s) provides:

(s) Limitation on punitive damages

No court may award punitive damages in any action with respect to a nuclear incident or precautionary evaluation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.

of Effective Date of 1988 Amendment, P.L. 100-408, §20, 102 Stat. 1066, 1084 (1988).[2]

Following the promulgation of the Amendments Act, the Defendants moved for partial summary judgment on Plaintiffs' claims for punitive damages, claiming among other things that Pennsylvania law on punitive damages was inconsistent with the compensatory nature of the Amendments Act. App. at 20a. On February 18, 1994, the district court denied the Defendants' motion for partial summary judgment finding that they failed to meet their burden to show that Congress intended to preclude awards of punitive damages. App. at 20a-26a. Relying on *Silkwood*, *supra*, the district court held that this Court effectively decided the issue under the Price-Anderson Act, as follows:

> Defendants argue in great detail that the award of punitive damages in this case is inconsistent with the overall scheme adopted by Congress in the Price-Anderson Act. However, the Supreme Court addressed essentially this same argument in *Silkwood* and decided that punitive damages were consistent with applicable federal statutes and regulation. In addressing the government's conflict preemption argument, the Supreme Court explicitly found that "exposure to punitive damages [does not] frustrate *any purpose* of the federal remedial scheme." 464 U.S. at 257 (emphasis added). As discussed above, the Court clearly considered the

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[2] The Amendments Act states that the *limitation* on punitive damages only applies to cases subsequent to August 20, 1988, as set forth in the Note of Effective Date of 1988 Amendment:

> Amendment by Pub.L. 100-408 effective Aug. 20, 1988, with the amendment by section 11 of Pub.L. 100-408 [amending subsec. (n)(2) of this section and enacting subsecs. (n)(3), (o)(1)(D) and (E), and (o)(2) of this section] to apply to nuclear incidents occurring before, on, or after Aug. 20, 1988, *but with the amendment by all other sections of Pub.L. 100-408 to apply only with respect to nuclear incidents occurring on or after Aug. 20, 1988*, see section 20 of Pub.L. 100-408, set out as a note under section 2014 of this title.

Pub.L.No. 100-408, §20, 102 Stat. 1066, 1084 (1988) (emphasis added).

> Price-Anderson Act to be part of the relevant federal remedial scheme. By implication, then, the *Silkwood* court concluded that punitive damages were not inconsistent with the Price-Anderson Act.

App. at 23a. Using the original Price-Anderson Act as a backdrop, the district court then reviewed the Amendments Act to determine if any of the amendments implicated a different conclusion and could not find any. The district court noted that §2210(s) of the Amendments Act, limiting punitive damages where the United States is obligated to make indemnification payments on behalf of a particular defendant, has no retroactive application and therefore, "that limit does not govern this case." App. at 24a. The district court concluded that punitive damages remain available under the Amendments Act and denied the Defendants' motion for partial summary judgment.

The court of appeals affirmed the district court's ruling. It recognized that the Amendments Act unambiguously permits an award of punitive damages in this case by holding that, "Plaintiffs argue that the plain meaning of the language of the Amendments Act counsels that punitive damages are available in these actions. We agree." *In re: TMI*, 67 F.3d 1119, 1123 (3d Cir. 1995); App. at 7a. Reaffirming the vitality of this Court's *Silkwood* ruling even after the promulgation of the Amendments Act, the court of appeals opined:

> In view of the sweeping changes effectuated in the Amendments Act, Congress could easily have completely precluded punitive damages in every case arising out of a nuclear incident or precautionary evacuation. However, Congress declined to extend its punitive damages limitation that far.

In re: TMI, 67 F.3d at 1125; App. at 11a.

The court of appeals also rejected the Defendants' arguments that Pennsylvania's laws regarding punitive damages conflicted with the purpose of the Amendments Act. The court

of appeals concluded its reasoning regarding the purported conflict, as follows:

> Because there is no conflict between the Amendments Act and the substantive laws of Pennsylvania which allow punitive damages, we will instruct the district court to proceed with the litigation of these matters in a manner consistent with this opinion.

In re: TMI, 67 F.3d at 1128; App. at 17a. Finding that no error of law occurred, the court of appeals affirmed the district court's ruling denying the Defendants' motion for partial summary judgment.

REASONS FOR DENYING PETITION

This Court should exercise its discretion to deny the Defendants' petition. Nothing stated in the Petition brings this appeal within the criteria enunciated in S.Ct.R. 10(a). Recognizing that there is no inter-circuit conflict and, in fact, that the issue is one of first impression, the Defendants instead contend that this appeal presents an issue of exceptional importance. No other court, including this Court, nor Congress has agreed with the Defendants. Only the Defendants find the question to be of exceptional importance. However, their arguments can not avoid the express language of the statute or the legislative history, both of which conclusively prove that punitive damages are available here.

1. THE PLAIN MEANING OF THE STATUTE PERMITS PUNITIVE DAMAGES

It is axiomatic that when interpreting statutes, the process "begins with the language of the statute itself." *Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 558 (1990). That is also "where the inquiry should end, for where, as here, the statute's language is plain, 'the sole function of the court is to enforce it according to its terms.' " *United States v. Ron*

Pair Enterprises, Inc., 489 U.S. 235, 241 (1989), *quoting, Caminetti v. United States*, 242 U.S. 470, 485 (1917).

The plain meaning of the Amendments Act conclusively proves that punitive damages are available regardless of what state's law will be used as the rule of decision. Under the Amendments Act, Plaintiffs' claims are now considered "public liability actions." *See TMI II*, 940 F.2d at 857; 42 U.S.C. §2210(n). Public liability actions are defined as "any suit asserting public liability." 42 U.S.C. §2014 (hh).

"Public liability" is also a defined term. It is unambiguously defined as,

> *[A]ny* legal liability arising out of or resulting from a nuclear incident or precautionary evaluation . . . .

42 U.S.C. §2014(w) (emphasis added). Section 2014(w) also identifies excepted claims of legal liability which are not to be considered "public liability." *See* 42 U.S.C. 2014 (i-iii). Significantly, claims for punitive damages are *not* listed as an exception.

Given this broad definition, this Court need only address whether punitive damages are *any* type of legal liability. *In re: TMI*, 67 F.3d at 1123; App. at 8a. Obviously punitive damages are a legal liability as this Court recognized in *United States v. Burke*, 504 U.S. 229, 234-38 (1992), when it held:

> [O]ne of the hallmarks of traditional tort liability is the availability of a broad range of damages [, including] punitive or exemplary damages . . . in those instances where the defendants' misconduct was intentional or reckless.

See also TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443 (1993), where this Court upheld a judgment finding legal liability for punitive damages by recognizing as enforceable the judgment of $19,000 in compensatory damages and $10 million in punitive damages; *In re: TMI*, 67 F.3d at 1123; App at 8a (Defendants conceded that punitive damages are a type of legal liability during oral argument before the court of appeals).

Because punitive damages are a form of legal liability, the plain meaning of the Amendments Act is to permit punitive damages.

2. THE LEGISLATIVE HISTORY DOES NOT REVEAL AN INTENT TO PROHIBIT PUNITIVE DAMAGES

The legislative history of the Amendments Act establishes that "Congress decidedly declined the opportunity to expressly eliminate punitive damages." *In re: TMI*, 67 F. 3d at 1126; App. at 13a. What the legislative history reveals is that to reach a compromise, the prohibition of punitive damages awards was withdrawn from the bill and that Congress intended to preserve this Court's ruling in *Silkwood*. *See* H.R. Rep. No. 104, 100th Cong., 1st Sess., pt. 1, at 19 (May 21, 1987), which states:

> The current Act does not expressly state whether a court may award punitive damages in connection with a claim arising out of a nuclear incident. Nor does the Act expressly state whether private financial protection funds or government indemnity funds could be used to pay punitive damages if imposed. In 1984, in *Silkwood v. Kerr-McGee Corporation*, 464 U.S. 238, the U.S. Supreme Court resolved the first of these two issues when it held that the Atomic Energy Act, as amended by the Price-Anderson Act, does not prevent a court from imposing punitive damages under state tort law. The Court did not address the second issue, however, whether private financial protection or government indemnity funds available under the Price-Anderson Act could be used to pay a punitive damage award.
>
> During the 99th Congress, the Subcommittee on Energy and the Environment approved an amendment to H.R. 3653 that would have prohibited use of either private financial protection or government indemnity funds available under the Act to pay punitive damage

> awards. The purpose of this amendment was to prevent the limited funds available for compensating actual injuries from being used to pay punitive awards. A serious question arose, however, whether the amendment subjected NRC licensees and DOE contractors to unlimited liability for punitive damages, thereby undermining one of the primary tenets of the Act. *Accordingly the Committee subsequently agreed to eliminate the amendment, thus restoring current law on the issue.* Notwithstanding this action the Committee remains opposed to punitive damage awards in connection with claims arising under the Price-Anderson Act because such awards could have the effect of diminishing the limited funds available to compensate actual injuries.

Id. (emphasis added).

Silkwood has not been questioned since. *See, e.g., Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 538 n. 4 (1992); *Molzoff v. United States*, 502 U.S. 301, 306 (1992).

Other legislative history reveals that Congress intended to permit punitive damage awards. *See* S.Rep.No. 70, 100th Cong., 1st Sess. 27 (June 12, 1987), *reprinted in* 1988 U.S. Code Cong. & Ad. News 1424, 1440, which states:

> Section 13 prohibits courts from awarding punitive damages under State law in any action that involves a nuclear incident if the action is brought against a Department of Energy Contractor, subcontractor or supplier indemnified under the Price-Anderson Act. The provision insures that the Federal taxpayers will not have to pay punitive damages, consistent with established Federal policy, most forcefully stated in the Federal Tort Claims Act (28 U.S.C. 2674), that punitive damages may not be awarded against the Federal Government.

> *This provision does not preclude the award of punitive damages* against persons, including licensees of the Commission, who are not indemnified by DOE under the Price-Anderson Act. The Committee intends no preference, for or against the awarding of punitive damages in suits against such persons, be inferred from the inclusion of this provision in the bill.

Id. (emphasis added). Thus, the report expressly states that punitive damages are not precluded, provided that their payment is not indemnified by the government. *See also*, S.Rep.No. 218, 100th Cong., 2d Sess. 12-13 *reprinted in* 1988 U.S. Code Cong. & Admin. News 1476, 1487-88.

Given this legislative history, the court of appeals concluded that, "[i]t is hard to imagine more lucid declarations of Congressional intent [to permit punitive damage awards], and we will not judicially amend this statute or subvert the policy of the legislation by adopting defendants' arguments to the contrary." *In re: TMI*, 67 F.3d at 1127; App. at 14a.

* * *

Congress, this Court, the court of appeals and the district court have all found that state law, consistent with the Amendments Act, permits punitive damages for cases like this one. Although Defendants advert to the existence of a question of exceptional importance, none exists. Moreover, the delays inherent in any appeal weigh against granting the petition as likely to upset the calendared June 1996 trial date, at the end of which the jury may simply decline any award of punitive damages.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

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No. 95-1315

Supreme Court, U.S.
FILED
MAR 29 1996

IN THE

Supreme Court of the United States

October Term, 1995

METROPOLITAN EDISON CO.,
PENNSYLVANIA ELECTRIC CO.,
JERSEY CENTRAL POWER & LIGHT CO.,
GENERAL PUBLIC UTILITIES CORP.,
BABCOCK & WILCOX CO.,
MCDERMOTT INC.,
DRESSER INDUSTRIES, INC.,
RAYTHEON CONSTRUCTORS INC.,
BURNS & ROE ENTERPRISES, INC.,

Petitioners,

v.

JONATHAN W. DODSON, et al.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY TO "RESPONDENTS' BRIEF IN OPPOSITION TO PETITION"

Respondents' "Brief in Opposition to Petition" presents a series of *non sequiturs* and misstatements which, when revealed, serve only to confirm the need for review by this Court.

Respondents argue (at 6) that in this case of first impression under the Price-Anderson Act, as amended in 1988, no court has agreed with Petitioners that this case presents an issue of exceptional importance. Because this *is* a case of first impression, that is a truism, nothing more. However, instead of attempting to show why the issue presented in this case is not important, Respondents offer only a merits argument, that the issue was decided correctly. That argument rests on four fallacies.

First, Respondents contend (at 7-8) that the statutory definition of "public liability" as including "*any* legal liability" requires the conclusion that "the plain meaning of the Amendments Act is to permit punitive damages." As we showed in the Petition, however, the breadth of the statutory definition of "public liability" (42 U.S.C. § 2014(w)) does not mean that punitive damages must be available; it means, rather, that their availability *vel non* must be assessed in light of the insurance, indemnity, limit of liability *and* rules of decision provisions of the Act.

Second, Respondents assert (at 8) that a "prohibition of punitive damages awards was withdrawn from" an earlier version of the 1988 Amendments Act. This is a misstatement. The rejected proposal was not one to prohibit punitive damage awards entirely, as stated by Respondents. Rather, the proposal "would have prohibited use of either private financial protection or government indemnity funds available under the Act to pay punitive damage awards." H.R. Rep. No. 104, 100th Cong., 1st Sess., pt. 1, at 19 (May 21, 1987). *That* proposal was rejected, to avoid any question whether the Act "subjected NRC licensees and DOE contractors to unlimited liability for punitive damages, thereby undermining one of the primary tenets of the Act." *Id.* This congressional action, far

from suggesting that punitive damages are necessarily consistent with the Price-Anderson Act, suggests precisely the opposite. Indeed, explaining this action, the same Committee Report declared:

> [T]he Committee remains opposed to punitive damage awards in connection with claims arising under the Price-Anderson Act because such awards could have the effect of diminishing the limited funds available to compensate actual injuries.

Id.

Third, Respondents emphasize the following language from S. Rep. No. 70, 100th Cong., 1st Sess. 27 (June 12, 1987), *reprinted in* 1988 U.S. Code Cong. & Ad. News 1424, 1440, concerning what became 42 U.S.C. § 2210(s): "This provision does not preclude the award of punitive damages. . . ." By their emphasis, Respondents evidently intend to draw attention away from the immediately following sentence: "The Committee intends no preference, for or against the awarding of punitive damages in suits against [NRC licensees], be inferred from the inclusion of this provision in the bill." *Id.* Yet it is precisely such a preference for permitting punitive damage awards that Respondents then claim from this history. The only logical inference from the passage as a whole, however, is that Congress left it to the courts to decide, case by case, whether particular state law punitive damage rules were consistent or inconsistent with the purposes of the Price-Anderson Act. This inference is the only one consistent with the statement that "the Committee intends no preference, for or against the awarding of punitive damages . . . , be inferred from the inclusion of this provision in the bill." Punitive damage awards in accordance with state rules such as in Michigan, Connecticut or Alabama, for example, might be determined permissible, as consistent with the compensatory purpose of the Act. *See* Petition at 15 n.7. Punitive damage awards in accordance with state rules such as in Pennsylvania, however, must be determined to be impermissible, because they are "inconsistent with" that purpose. *See id.* Congress evidently considered that the federal courts, which deal with such state

rules routinely in diversity cases, were in a better position than Congress to make those assessments and ultimate judgments, as the need arose.

Fourth, in the course of their "Statement of the Case," Respondents assert (at 3) that the Price-Anderson Amendments Act of 1988 "did not alter the law of *Silkwood* [*v. Kerr-McGee Corp.*, 464 U.S. 238 (1984)]." That assertion is plainly wrong. In *Silkwood,* Kerr-McGee argued:

> . . . that our ruling in *Pacific Gas & Electric [Co. v. State Energy Resources Conservation & Development Commission,* 461 U.S. 190 (1983)] is dispositive of the issue in this case. Noting that 'regulation can be as effectively exerted through an award of damages as through some form of preventive relief,' Kerr-McGee submits that because the state-authorized award of punitive damages in this case punishes and deters conduct related to radiation hazards, it falls within the prohibited field.

Silkwood, 464 U.S. at 238 (citation omitted).

The Court rejected Kerr-McGee's implied pre-emption argument. The Court acknowledged that in the Atomic Energy Act of 1954, and in the 1959 amendments to that Act, Congress chose to exclude states from regulating the nuclear hazard. 464 U.S. at 250. That choice, however, was not regarded as also signaling a congressional decision to "remove all means of judicial recourse for those injured." 464 U.S. at 251. That Congress had no such intent was made plain by its adoption of the Price-Anderson Act in 1957:

> [I]t is clear that in enacting and amending the Price-Anderson Act, Congress assumed that state-law remedies, in whatever form they might take, were available to those injured by nuclear incidents.

464 U.S. at 256.

The 1988 amendments to the Price-Anderson Act, coming four years after *Silkwood* was decided, dramatically changed this landscape. In the 1988 amendments, Congress supplanted all state remedies, replacing them with the *federal* "public liability action." And for that federal action, Congress

expressly directed that state-law based rules of decision could serve as substantive federal rules only if they were not "inconsistent with the provisions of" the Price-Anderson Act as a whole. 42 U.S.C. § 2014(hh).

Respondents' assertion (at 3) that the 1988 Price-Anderson amendments "did not alter the law of *Silkwood*" is thus patently wrong. Those amendments altered the very feature of the statutory framework on which the analysis in *Silkwood* depended.

This Court observed, in *Silkwood:*

> [I]t is Kerr-McGee's burden to show that Congress intended to preclude [punitive damage] awards. Yet, the company is unable to point to anything in the legislative history . . . that indicates that punitive damages were not to be allowed.

464 U.S. at 255 (citation omitted). Petitioners here face no such burden, because Congress has now expressly declared that state rules of decision may serve as substantive federal law only to the extent that those state rules are consistent with the financial protection system of the Price-Anderson Act. Petitioners have amply shown that punitive damage claims, when intended solely to punish and deter, are inconsistent with Congress' intent in fashioning the omnibus insurance and indemnity program, and channeling all legal liability to the defined and limited funds. Congress' plain and repeatedly expressed intent, as detailed in the Petition, was to secure the efficient and prompt *compensation* of persons truly injured, and to prevent the transaction costs and delays associated with litigation of issues, such as punishment and deterrence, irrelevant to the real goals of the Price-Anderson Act.

To prevent those clearly expressed goals from being frustrated in this massive litigation, and to prevent that frustration from being repeated in other presently pending and prospective cases, the decision below should be reviewed and corrected now.

CONCLUSION

For the reasons stated above and in the Petition dated February 20, 1996, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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